

**IN FACTFINDING PROCEEDINGS PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTIONS 3505.4 AND 3505.5**

In the Matter of a Dispute between

CITY of HAYWARD

and

SEIU, Local 1021.

**REPORT OF
FACTFINDING PANEL**

February 3, 2014

PERB Case No. SF-IM-124-M

FACTFINDING PANEL:

Katherine J. Thomson, Impartial Chairperson, El Cerrito

John Stead-Mendez, SEIU Local 1021, Oakland

Kelly McAdoo, Assistant City Manager, City of Hayward

APPEARANCES AND WITNESSES:

On behalf of SEIU Local 1021:

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On behalf of the City of Hayward:

Jack Hughes, Liebert Cassidy Whitmore
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Matt McGrath
Seema Vashi
Sarah Monnastes
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Tracy Vesely

I. BACKGROUND

A. Employer Description

The City of Hayward is a public agency employer within the meaning of Sections 3500-3511 of the Government Code. The City employs approximately 169 full-time equivalent clerical and related employees (Clerical unit) and 112 full-time equivalent maintenance employees (Maintenance unit) represented by SEIU Local 1021, which has been recognized as the exclusive representative of both units. The City operates water and wastewater facilities as well as an airport.

B. Procedural History

The City and Local 1021 are parties to two collective bargaining agreements, effective May 1, 2007, through April 30, 2011, which were extended through April 30, 2013. After compliance with the public notice provisions of the Government Code, the parties began negotiations for a successor contract in February 2013. The City declared impasse on July 26, 2013, and made last, best and final offers (LBFOs) to each unit. Sessions with a mediator were unsuccessful, and the matter was certified for factfinding.

The factfinding hearing was conducted on November 18, 19, and 22, and December 17, 2013. The parties had a full opportunity to introduce relevant data and exhibits, and present oral testimony and argument. The parties agreed to present testimony on wages, health and welfare benefits, retiree medical benefits, and the City's financial ability, but relied solely on written evidence and arguments in their briefs for the remainder of the issues. The briefs were timely submitted on January 3, 2014. The panel met in executive session by conference call on November 7, December 2 and 12, and January 10 and 15, 2014, and in person on January 30, 2014.

II. ISSUES

The Chair strongly encouraged the parties to meet to narrow the number of issues. There was some success, but there remained dozens of issues. The following issues, most

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of which contain many sub-issues that are explained below, were submitted to the factfinding Panel for both units:

- * Salary for Fiscal Year 2014 (2013-14) and the ensuing two to four fiscal years
- * Health and welfare benefits for the same period
- * OPEB - Retiree health and welfare benefits
- * Management Rights
- * Severance Pay
- * Layoffs, including Order of Layoffs, Seniority, Notice of Layoff, Employee Options, Right of Return Following Layoff (Maintenance only)
- * Overtime Work
- * Meal Period and Rest Period
- * Bilingual Pay
- * Longevity Pay
- * Medical Insurance, including Flexible Benefit Allowance, Federal or State Health Plan, Alternative Benefit, Supplemental Retirement Benefit
- * Dental Insurance
- * Vision Care
- * Retired Employees
- * Change in Pay Upon Reclassification
- * Working Out of Class
- * Retirement Program
- * Holidays, including Holidays for Certain Part-Time Employees (M only), Qualifying for Holiday Pay, Compensation for Holidays Worked, Holiday-New Year's Eve, Holiday Pay for Twenty-Four Hour Employees
- * Vacation Leave Policy, including, Vacation Accrual for Full-Time Employees, Vacation Accruals for Permanent Part-Time Employees
- * Sick Leave Policy, including Sick Leave Accruals for Part-time Employees, Sick Leave Notice and Certification, Payment for Unused Sick Leave
- * Industrial Disability Leave
- * Leaves of Absence
- * Parental Leave
- * Temporary Positions/Employment Agencies
- * Restrictions on Outside Work
- * No Strike

The following issues involve only the Maintenance unit:

- * Overtime Regulations
- * Night Shift Differential
- * Certification Fees
- * Sewer Maintenance Differential
- * Standby Provisions
- * Pesticide Differential
- * Water Treatment Certification Differential
- * Heavy Equipment Repair Differential
- * Distribution Certification Differential

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- * Thermal Plastic Hazard Differential
- * Homeless Encampment Cleanup Differential
- * Arborist License Differential
- * Pesticide License Differential
- * Safety Shoes

The following issues involve only the Clerical contract:

- * Attendance at Evening Meetings
- * Police Department Training Pay
- * Participation in Promotional Examination
- * Introduction of New Equipment

Neither party identified the duration of the contract as an issue. However, the City offered a one-year and a five-year economic proposal, whereas the Union offered a three-year economic proposal.

III. ANALYSIS AND RECOMMENDATIONS

The panel has based these recommendations on factors commonly used in factfinding and similar to those listed in Government Code Section 3505.4 for consideration in factfinding in the public agencies. Primary among those are 1) state and federal laws that are applicable to the employer, 2) local rules or ordinances, 3) The interests and welfare of the public and the financial ability of the public agency, 4) comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services for comparable public agencies, and 5) the consumer price index for goods and services, commonly known as the cost of living, and 6) the overall compensation presently received by the employees, including direct wage compensation, leave, pensions, medical benefits, the continuity and stability of employment, and all other benefits. The evidence cited necessarily does not include up-to-the-moment information.

A. COMPENSATION

The City does not claim an inability to pay higher wages, but argues that it is facing deficits over the long-term that will result in negative general fund balances

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beginning in FY 2018. It asserts that it needs a structural change to compensation, or it will have to cut back on other public service priorities. For planning purposes the City has a 10-year plan, which it updates periodically. The plan as updated May 2013 (CX 24) shows actual deficit spending in FY 2012, and projected deficit spending for all years following, even assuming that it could prevail on the 5% labor concessions it is demanding from all its units.

The City's one-year proposal would take all the compensation concessions it is demanding – about 5 % for maintenance and 5.6 % for clerical – in FY 2014, rather than spreading out its proposed structural changes over five years. The City explained that it framed this one-year proposal only for purposes of implementing a last, best and final offer, but that its preferred proposal is the five-year plan.

The City's five-year proposal for both units would provide no salary increases in FY 2014 and FY 2015. It would adjust salaries by the percent change in the CPI-All Urban Wage Earners for the San Francisco-Oakland-San Jose Area, up to 2%, in each of the final three years of the contract. Other provisions of the Clerical unit proposal appear in the table below:

| FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|---------------------------|----------|--------------------------|--------------------------|--------------------------|
| No Raise | No Raise | 10% Medical Contribution | CPI Adjustment, Cap 2.0% | CPI Adjustment, Cap 2.0% |
| 20% Dental Contribution | | \$16.50/pp OPEB Cont | | |
| 50% Vision Contribution | | CPI Adjustment, Cap 2.0% | | |
| FLSA Minimum for Overtime | | | | |
| WC Paid at Legal Mandate | | | | |

The City would reduce its obligation to pay overtime to the minimum requirements of the Fair Labor Standards Act, and would reduce the amount it pays for workers compensation benefits to the minimum required. Employees would begin to make contributions to a trust for retiree medical benefits in FY 2016. The City has estimated that its five-year proposal would have a negative \$23 impact on the paycheck of a clerical employee in FY 2014, assuming the employee chooses the Kaiser health plan. (CX 52)

The five-year proposal for the Maintenance unit, which already agreed to dental and vision contributions for FY 2013, appears in this table:

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| FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|---------------------------|----------|---------------------------|--------------------------|--------------------------|
| No Raise | No Raise | 7.5% Medical Contribution | CPI Adjustment, Cap 2.0% | CPI Adjustment, Cap 2.0% |
| FLSA Minimum for Overtime | | \$17.95/pp OPEB Cont | | |
| WC Paid at Legal Mandate | | CPI Adjustment, Cap 2.0% | | |
| | | | | |

To view the dispute in a fuller context, it is also necessary to understand that, like many local agency workers, the employees suffered 5% furloughs during FY 2010, FY 2011, and FY 2012. In addition, the two units already gave up the equivalent of nearly 12% of pay in concessions in FY 2013, as explained below.

Before addressing the City's economic argument, the various components of these compensation proposals are discussed separately, although the Panel recognizes that viewing salary alone does not give a complete picture of an employee's compensation.

1. WAGES

City Proposal: The City would hold wages steady for the first two years to achieve a structural correction, and then provide cost-of-living raises of up to 2% for the remaining three years of a five-year contract.

Union Proposal: At the conclusion of mediation, the Union's demand was a 4% raise in FY 2014, no raise in FY 2015, and a 3% raise in FY 2016, with a \$1,000 ratification bonus.

a. Comparability with other Agencies

The City contends its external comparability data supports the City's five-year compensation proposals. The MOUs call for joint salary surveys paid for equally by the Union and the City. (CX 7, 8, Sec. 9.02 and side letters) The Union declined to participate in the survey, so the City conducted a study of total compensation at its own cost. Total compensation included employer PERS contributions and the concessions of 12% that the City had negotiated for FY 2013.

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The City asserts that, beginning with an external consultant's survey in the 1990s, the parties have had a 20-year history of using the following comparable municipalities: Alameda, Berkeley, Daly City, Fremont, Palo Alto, Richmond, San Leandro, San Mateo, Santa Clara, and Vallejo. The Union objects that other utility agencies are not included in the survey. The City counters that, because five of the cities have wastewater or other utility facilities, there is enough information to gauge the market for utility workers. The Panel agrees with the City that inclusion of special utility districts, such as EBMUD, among the comparators would be inappropriate because they have different revenue sources and enjoy economies of scale unavailable to the City.

The City conducted the survey in late 2012 and early 2013. When data on a benchmark position was not available from at least four cities, no results were reported. For example, there was no data on airport maintenance workers from other cities. The results were presented to the Union at the first bargaining session. As the Union has not objected that any of the data is incorrect, the Panel assumes that the results are accurate.

Out of 21 Maintenance positions, there was insufficient data on 9 jobs. For the remainder, the survey showed that total compensation was at least 4.73% above the mean of the compensation for the similar position in the surveyed cities. (CX 21) Of 24 Clerical positions, there was insufficient data for 7 of them. Hayward's total compensation for one, records supervisor, was .52% below the market average. Library assistant compensation was only 2.44% above the mean. The remainder of the positions were compensated at least 4.5% above the market average. (CX 42)

The City asserts that the data demonstrates that the modest structural changes sought by the City (with a cost to employees equivalent to approximately 2% of salary) will not cause employees to be paid less than employees in comparable classifications in comparable agencies, and in many cases, employees will continue to be paid 10% or more than their counterparts in other major Bay Area cities. The Panel finds that, while this data tends to support the City's claim that its clerical and maintenance workers are compensated above the comparator mean, it is not as conclusive or as clear as the City asserts.

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The Union claims, however, that this assertion makes no logical sense. In 2010, SEIU brought all classifications to market average with an average equity adjustment of 2.7% for the Maintenance Unit and 4.2% for the Clerical Unit.¹ Since being brought to market average in FY 2010, SEIU employees have received no increases and have given numerous concessions. Thus, the Union argues, it is illogical to conclude these classifications are above market rate.

Unfortunately, the Union did not provide any data to back up its assertion that the City's data is incorrect. It introduced evidence on salary increases in 3 localities in Northern California (UX 18), but those do not counter the comparability data introduced by the City because they do not show the results for the comparator cities. Oakland's workers did gain a 3% raise over two years and beat back concessions, but Oakland is a much larger city that historically has not been included among the City's comparators. Santa Rosa and Sebastapol also have not been comparators. They are geographically distant from Hayward and would not compete for the same workers. Small increases in compensation in other geographically distant cities — Fairfield (employer-paid medical premium increases), Jackson (\$1,800 bonus) and Chico (12 hours paid time off) — also do not support the Union's demand for 7% in raises over the next three years.²

In addition, the City's study surveyed total compensation, which makes it improper to extrapolate or draw inferences from prior salary-only surveys. As the City's evidence also shows that City employees are eligible for higher employer contributions to health and welfare benefits than they would be in comparator cities (CX 68), it is not illogical that total compensation of City clerical and maintenance workers could be higher than the average, despite the concessions.

In addition, the City's Human Resources Director, Fran Robustelli, testified the City has had low turnover and no trouble attracting applicants for employment. There

¹ Equity increases were raises designed to bring City workers in various classifications to market rates in FY 2007-2009. They ranged from 4.2% to 33.25% for clerical workers and .24% to 22.72% for maintenance workers. (CX 16 and CX 7, 8)

² The Union's information on contract settlements in K-12 and community college districts (UX 17) is not persuasive, since the districts have different revenue sources, work years, etc.

were 14 voluntary resignations in FY 2012, a turnover rate of 1.78%. This supports the assertion that City compensation is competitive with that of comparator cities.

Going forward, the comparability of the City's compensation is less certain. The City introduced evidence on COLAs for maintenance employees at the comparator cities. (CX 43, p. 17) In Alameda, the workers will receive at least a 1.5% increase in 2014 and a 2% increase in 2015, more if there are higher local taxes. San Mateo workers gained 2% raises in July 2013, 2014, and 2015. As Berkeley's contract with service workers is closed until September 2014, those employees will likely receive no COLAs in the next year. (UX 18) The remainder of the municipalities studied were in negotiations at the time of the survey or have had MOUs expire since that time. Thus, their workers could receive a COLA before July 2014, but the amount is unknown. The status and results of comparators' negotiations for clerical workers is essentially the same. (CX 44, p. 5)

The Panel concludes that, without a wage increase in FY 2014, clerical or maintenance employees' total compensation may remain at or above the average of those who work for comparators, but will likely fall below the average after two years of flat wages. Below average compensation is likely to occur sooner if the employees here begin contributing to health and welfare benefits, as recommended below.

b. Consumer Price Index

Annual increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Francisco-Oakland-San Jose area totaled approximately 14.5 percent from June 2006 through June 2012. The total for the CPI-U for all urban consumers in the area was 13.9%. (CX 45) During that time, the cost of living raises of the clerical unit amounted to 14%, and average equity raises added to 12.6%. The cost of living raises of the maintenance unit totaled 14%, and average equity raises of the unit were 8.1%. (CX 45, p. 3) The CPI for the area rose another 2.6 percent from June 2012 to June 2013, but the employees received no raises.

Thus, the employees' COLAs have not kept up with inflation as measured by the CPI, but equity adjustments in some classifications allowed the wages of many City

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employees to keep pace with or beat inflation. This is true historically looking back to FY 2000. (CX 45, p.3)

Neither party attempted to compare total compensation increases to the CPI. However, it must be noted that the employees paid 7% of pay more toward their pensions beginning July 1, 2012. Therefore, the paycheck of the average maintenance worker is trailing the CPI-W by approximately 2%, and the average clerical worker is only 2.5% ahead since June 2006.

The City argues that the employees' wage increases have sufficiently surpassed inflation that they should be able to contribute to insurance premiums and retirement health and welfare benefit funding.

In fact, in FY 2009, there was deflation of .2%, while the clerical and maintenance workers received an average of 8.2 % and 6.7% increases in pay, respectively. However, this boost in purchasing power was fleeting, since the following year they were subject to a 5% furlough at the same time as receiving a 4% COLA while the CPI-W rose 1.4%. The next two years they had 5% furloughs (CX 7, 8 side letters), while the CPI-W rose 2.9% and 2.7%. (CX 45) In FY 2013, furloughs ended, but both units resumed paying an additional 7% of their wages toward their pensions and the maintenance employees contributed to their dental and vision benefits for the first time. (CX 50, 52). In addition, the CPI-W rose 2.6% in FY 2013. Not only did the PERS contribution wipe away all or nearly all of the average employee's FY 2009 pay increase, inflation cost them purchasing power.

The Panel finds that the CPI does not support the City's position, particularly with regard to maintenance workers, since FY 2013 concessions have actually decreased the employees' purchasing power despite the appearance on paper that their wages have surpassed inflation. In addition, some employees received small or no equity increases, not the average equity increases discussed here.

c. Internal compensation comparisons

No bargaining unit or group of unrepresented employees received any COLAs in FY 2011 through FY 2013. Rank and file and management fire units bargained 2% increases in FY 2014, FY 2015, and 3% in FY 2016. (CX 16) The firefighters are paying 15% of salary towards their pensions, including 6% of the employer's 33% obligation. Police are paying 8.62% of the employer's 35% obligation in FY 2014. (CX 26)

Between July 2006 and June 2010, it is difficult to compare the pay raises of safety units and other units because the safety unit increases were based on surveys of compensation in other agencies. Compared to the COLAs of 14% over this time period for non-safety represented employees, police officers received nearly 19% raises, and firefighters received 17% raises. Police management pay was boosted over 19%, and fire management received 17.15% in salary increases (not including 7.23% equity raises for fire management). (CX 16) But, because those survey-based wages take comparator rates of compensation into consideration, it is fair to look at equity raises of the clerical and maintenance units during the time period, which amounted to an average of 12.6 % for the Clerical unit and 8.1% for the Maintenance unit. Of course, some employees in the Clerical unit received only 4.2 % equity increases over the three years, and some in the Maintenance unit received no equity increase. (CX 7, 8)

The City has been able to gain further concessions from the fire employee units and from management that have reached a target of 17% structural decrease in compensation. The details of these agreements were not in evidence.

The Union argues that large raises for police and fire from FY 2007 through FY 2010, as well as statements by city representatives to Union representatives, indicate that the City does not want to treat the SEIU units comparably when increasing salaries, but now wants to have them share in concessions to the same extent. The City counters that police officers experienced flat wages in FY 2008 and FY 2009, and fire employees had no raises in FY 2009 and FY 2010, while the clerical and maintenance units benefitted from COLAs. (CX 16) While this is true, the flat pay for the safety units in each case followed double digit raises. The most accurate way to characterize the raises across the

units is that the City boosted the pay of most of its employees (except unrepresented employees) by large amounts to reach market pay before holding wages steady in FY 2011. The equity increases were spread out over a longer time for the SEIU units than for the safety employees.

As the evidence regarding other units' concessions in recent contracts is spotty and somewhat conclusory, comparisons between them do not support the City's proposals.

2. HEALTH AND WELFARE BENEFITS

City Proposal on Flexible Benefit Allowance:

The City shall provide a contribution to the City's Flexible Benefits plan (125 Plan) for each full-time employee in regular or probationary status who is enrolled in one of the PERS medical insurance plans offered by the City. Employees can use this contribution to offset the cost of benefits purchased through the plan. The value of any flexible benefit allowance provided by the City under this Section shall be determined as follows:

A. Effective the pay period that includes July 1, 2015, the allowance provided to an eligible employee, shall be equal to ninety-two and a half percent (92.5%) [90% for clerical employees] of the premium cost for health insurance coverage based on the employee's plan selection and participation level eligibility (e.g. Employee only coverage, Employee + 1 coverage, or Employee + 2 coverage), less the amount of any contribution provided under Section 6.01 above. The City's maximum contribution under this section shall not exceed the cost of ninety-two and a half percent (92.5%) [90% for clerical employees] of the premium for the second most expensive benefit plan (currently Blue Shield) as determined by the employee's participation level, less the City's contribution towards medical benefits under PEMHCA. except that, in no event shall the sum of the City's contributions pursuant to the provisions of Sections 7.01 and 7.02 of this Memorandum of Understanding exceed ninety-two and a half percent (92.5%) [90% for clerical employees] of the premium cost for the PERS medical insurance plan in which the employee is enrolled.

The remainder of the proposed changes to the Flexible Benefit Allowance section in proposed B, C, D and E were not addressed by the City, and therefore will not be considered by the Panel. The City is not proposing to make substantive changes to the following current language:

The City will not treat any contributions made to the Flexible Benefits plan as compensation subject to income tax withholding unless the Internal Revenue Service and/or the Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any Federal, State, or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

City Proposal on Dental Insurance:

The City shall contribute towards dental insurance premiums coverage for full time employees, other than temporary and provisional employees, and their eligible dependents. Beginning with the pay period that includes July 1, 2012, the City's contribution on behalf of an eligible employee participating in a City-sponsored dental plan shall be equal to eighty percent (80%) of the monthly premium for dental insurance, as determined by the employee's enrolled participation level in the City sponsored dental plan. Employees enrolled in dental insurance are required to contribute the remaining twenty percent (20%) of the premium costs for dental insurance coverage.

Monthly premium rates are established on a calendar year basis by the insurance provider, or in the case of a self-funded plan, by a third party examining plan utilization review, market trends, overall plan costs and any other industry standard metrics deemed necessary by the third party.

Currently, the City provides insurance coverage through the Delta Dental plan which includes the following: 100% payment of diagnostic and preventative services (exempt from deductible); 80% payment for other basic services, and crowns and cast restorations; 70% payment for prosthodontics; 50% payment for orthodontics (adults and children). Deductibles each calendar year shall be Twenty Five Dollars (\$25) per person with a maximum of Seventy Five Dollars (\$75) per family. Maximum benefit payments shall be Two Thousand Dollars (\$2000) per year for each patient except for orthodontics which shall carry a Twenty Five Hundred Dollars (\$2,500) lifetime maximum benefit per patient.

The City reserves the right to provide dental care benefits under a plan or through a carrier of its choice. Alternate coverage may be provided through a consortium of public agencies or private employers, which may be formed for the purpose of providing dental care benefits for employees; or through a program of self-insurance. In the event the City exercises this option the alternate coverage shall be substantially equivalent to the coverage in effect at such time as a change in carriers takes effect.

City Proposal on Vision Care:

The City shall contribute towards vision care insurance for full-time employees, other than temporary and provisional employees, and their eligible dependents. Currently, the City provides vision coverage through VSP, under a plan that provides for Fifteen Dollar (\$15.00) deductible for an eye examination, lenses and frames once per year. Beginning with the pay period that includes July 1, 2013, the cost of the monthly premium shall be shared equally (50/50) between the employee and the City.

Monthly premium rates are established on a calendar year basis by the insurance provider, or in the case of a self-funded plan, by a third party examining plan utilization review, market trends, and overall plan costs and any other industry standard metrics deemed necessary by the third party.

The City reserves the right to provide vision care benefits under a self-funded plan or through a carrier of its choice. Alternate coverage may be provided through a consortium of public agencies or private employers which may be formed for the purpose of providing vision care benefits for employees or through a program of self-insurance. In the event the City exercises its option to move to a self-funded plan or to change insurance carriers, any new benefit plan shall provide coverage that is substantially equivalent to the coverage available at the time this option is exercised.

Union Proposal: No changes to any of these sections.

The City currently contributes an amount up to the full premium cost of the second-highest plan for family health insurance. The City estimates that under the Affordable Care Act the medical insurance rates will increase about 10% annually. From FY 2010 through FY 2013, the actual medical premium costs to the City have increased an equivalent of about 3.5 % of pay in four years. (CX 32)

The City's proposal equates to an employee contribution of 10% towards medical premiums for the Clerical unit and 7.5% for the Maintenance unit.³ Proposed employee contributions would be paid with pre-tax wages, which affects take-home pay less than if they were an after-tax deduction from the paycheck.

³ The City did not explain the difference in proposed medical contribution rates for Maintenance and Clerical employees.

For some units, such as the Clerical unit, the City also pays the full premium for dental and vision benefits. The City's proposal would equate to a 20% employee contribution towards dental premiums and a 50% employee contribution towards vision premiums for the Clerical group only. (In exchange for the opportunity to cash out up to 30 hours of vacation leave, the Maintenance unit assumed these contributions as part of their concessions package in FY 2013. [CX7, side letter 7])

The Union states the Maintenance unit conceded 20% towards dental insurance coverage and 50% toward vision care as a short term fix to an immediate financial need. The Clerical unit did not agree to such concessions. At this juncture, the Maintenance Unit wants dental insurance and vision care coverage returned to 100%.

In addition, the Union points out the City's vision care proposal eliminates coverage for temporary and provisional employees. It claims this proposal was not made prior to the declaration of impasse.

a. Comparability

The City introduced evidence showing that its maximum contractual contributions for 2014 toward medical, dental and vision insurance benefits are at least 25% above the average for clerical and maintenance workers among the 8 comparator municipalities that provided final numbers to the City. (CX 68) The City's 2013 maximum contribution of approximately \$2,040 is higher than the 2013 rates shown for Vallejo (\$1,463 for IBEW-represented employees and \$1,612 for administrative employees) and higher than for AFSCME-represented employees in Santa Clara (\$1,142).

The Union argues that few employees require the City to expend the maximum amount in health and welfare contributions. The Union calculated averages of actual medical contributions for both units for 2013 and what those averages would be with 10% increases in 2014. In 2013, the City actually paid an average of \$1,527 for maintenance employees and \$1,356 for clerical employees; in 2014, a 10% increase would boost these amounts to \$1,679 and \$1,492. The Panel finds that the best way to compare medical benefits is to compare the contractually obligated maximum, whether or

not employees take advantage of that maximum contribution. In addition, it notes the Union provided no information on actual costs for comparator municipalities.

The comparability information shows that several comparators provide no vision care coverage, and most do not contribute an amount as high as the City does for its clerical workers. The amount contributed for maintenance employees is about average. (CX 68) Comparators all provide dental coverage, but only one contributes more than the City does to clerical workers' coverage. About half contribute more than the City contributes to its maintenance workers' dental coverage, but several of those are less than \$5 more.

The City's proposal for FY 2016 would not provide a medical plan under which an employee could cover his or her family without contributions. The evidence indicates, however, that the full family premium for other plans (rather than the second most expensive plan), such as the 2014 Anthem Traditional HMO (\$1,894) or PERS Care (\$1872), is close to the median of the comparators. (CX 39) At the same time, providing full premiums only for a less expensive plan would address the City's interest in motivating employees to be more cognizant of the cost of benefits and make more economical choices in their selection and use of medical plans.

b. Internal Compensation Comparisons

The Maintenance unit already agreed for FY 2013 to contribute toward dental and vision benefits in exchange for the opportunity to cash out up to 30 hours of earned vacation leave. The City asserts that other units will be making the same medical benefit contributions in FY 2016, but did not provide details. The evidence available during the hearing indicates that only the firefighter unit and management have accepted the 5% concessions, but there was no indication what that agreement comprises.

c. Other considerations

The Affordable Care Act as enacted requires a "Cadillac tax" for medical benefits above a designated threshold. The City has been advised by its health benefit vendor, Alliant, that its benefits are likely to become subject to a \$1.5 million tax in 2018 if its

medical benefit costs climb by 10% each year as predicted. At this point, however, the imposition of any tax is highly uncertain, as plans change. In 2014, for example, the District's maximum medical contribution actually decreased because plan features and premiums changed. (CX 39)

The Panel recommends that the Clerical unit pay the same contributions to dental and vision coverage as the Maintenance employees do, effective January 1, 2014. The Chair recommends that these contributions be required only if a \$750 payment is made at the time of ratification. The Panel also recommends the City reduce its maximum contribution, effective January 2015, to an amount sufficient to pay the premiums for the fourth highest family plan.

3. OPEB – RETIREMENT HEALTH BENEFITS – Sec. 7.09 (new Sec. 7.05)

City Proposal:

Employees who retire from the City with at least ten (10) years of continuous City service are eligible to receive a supplemental retirement benefit. This benefit shall be equal to \$274.72, less the amount provided for under the section 6.01 above. This supplemental benefit is provided in the form of cash to the retiree on a monthly basis. In order to receive this benefit, the employee must begin receiving pension benefits within one hundred and twenty days (120) of leaving City employment. Retirees are solely responsible for any tax consequences associated with the receipt of benefits under this section.

Beginning with the pay period including July 1, 2013, all members of the bargaining unit shall contribute \$16.50 [\$17.95 for maintenance employees] per pay period, and until otherwise negotiated to fund this benefit, which shall be placed in an irrevocable trust to fund such enhanced retiree medical benefits.

(Other language deleted from Section 7.09 was not addressed by the City and will not be considered by the Panel.)

Union Proposal: No change.

The City's retiree medical program pays a defined monthly amount to CalPERS on behalf of each employee who retired in 1982 or afterward and is eligible for a PERS retirement benefit, and a supplemental benefit to each employee who retires with at least

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10 years of service (5 years for police and fire employees). The current total amount is \$274.72. Unlike benefits in some other public agencies, the City's retiree health contributions are not open-ended or uncapped, except with respect to the police benefit that is tied to Kaiser medical plan rates. These payments, however, are not prefunded for miscellaneous employees and are only partially funded for police and fire employees. The City is paying \$2.4 million currently in retiree health care contributions this year. Payments to retirees are expected to increase from \$2.5 million in FY 2013 to \$2.8 million in FY 2018. (CX 24) The actuarial projections in 2011 were higher (CX 36, p. 10), but have been modified in the 10-year plan.

In July 2011, the City received an actuarial report that calculated the annual contribution required (ARC) to fully prefund the benefits in 26 years, including unfunded accrued liabilities to date. For the miscellaneous units in 2011, that ARC was 4.12% of payroll, or approximately \$1,659,000. The ARC includes the normal cost of the benefit, which was calculated at 1.34% of pay. The ARC was 17% of pay for rank-and-file police and over 11% of pay for firefighters, partially because these employees are eligible for \$569 and \$508 monthly, respectively. Normal costs for those groups were calculated at 6.18% and 2.83% of pay. (CX 36) Based on the increase in the ARC from 2009 to 2011, the City projects the ARC for all units to increase from \$6.6 million in FY 2012 to \$7.5 million in FY 2014. (CX 24) It is not clear to the Panel whether the downward changes in actual retiree medical costs experienced in FY 2013 and FY 2014 to date have yet been considered in new actuarial projections.

The City's five-year proposal would require a \$16.50 contribution per biweekly pay period to the retiree medical benefit trust for clerical workers (1% of pay for the lowest-paid clerical worker) and a \$17.95 contribution per pay period for maintenance employees (1.1% of pay for the lowest-paid maintenance worker). The City would credit these contributions as 0.63% and 0.68% toward its 5% concessions target.

a. Comparability

The City's survey of comparators shows that it pays less than most of the comparators in retiree medical contributions, although the structure of retiree medical

contributions varies. There is a trend toward reducing this liability by changing eligibility and benefit levels, as shown by recent reductions in Fremont and Palo Alto, but those cities have not cut the contribution for all new employees below the amount the City currently pays. (CX 43, p.11, CX 44, p. 2)

b. Internal Comparisons

Fire employees are already contributing 1% to the OPEB trust in FY 2014 (when they also receive a 2% COLA), and police officers begin 1% contributions in FY 2015. (CX 36, CX 16)

The Union voiced its contention that benefits of police and fire employees cost the City more money than those of the clerical and maintenance units. The City argues that the Union's position is unfair because it suggests that employees who work in dangerous classifications or jobs that require considerable knowledge, education and/or experience should give back more in a recession.

The Panel recognizes that the labor market rewards hard work, career advancement, and working in dangerous public safety classifications. Here, that includes a medical retiree benefit almost twice the amount of the non-safety personnel. At the same time, the rising retiree medical liabilities are due predominantly to the police and fire units. Asking clerical and maintenance employees to pay 1% of salary (nearly 75% of the normal cost of their benefit) toward the liability is hugely disproportionate, since 1% of police pay is less than 1/6th of the normal cost of their benefit and 1% of fire pay is 36% of the normal cost of a fire fighter's benefit.

4. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE CITY'S ABILITY TO PAY

The City asserts that it needs a structural 17% change to compensation or it will need to cut back on other public service priorities. The basis for this percentage was not explained. For FY 2013, the City was able to negotiate concessions from both units of approximately 12%. In addition to a cancelled 3.5 percent raise for FY 2012, the components of the Clerical unit givebacks were: 1) 7% employee contribution to PERS;

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2) no employer paid deferred compensation; and 3) no employer-paid Voluntary Employee Benefit Association contribution (for extra savings for retiree medical benefits). Similarly, the Maintenance unit gave up the following concessions: 1) 7% employee contribution to PERS; 2) no employer paid deferred compensation; 3) no employer paid VEBA contribution; 4) a 20% dental contribution and 50% vision contribution. The Union calculates that these concessions, along with furloughs in FY 2011 and FY 2012, have cost an average of \$14,548 per worker and saved the City \$4.1 million. (UX 3) The Panel notes that furloughs dramatically affect an employee's paycheck, but are essentially one-time savings to the employer and do not assist in correcting a structural deficit.

The City is demanding further concessions of 5% over the next five years. (The Clerical unit did not agree to dental and vision contributions that the Maintenance unit accepted, resulting in a slightly higher concession demand from the Clerical unit.) The City's method of figuring the 5% concession, however, credits the loss of COLAs of up to 2% in each of the first two years of the contract. Thus, the City is not looking for a 4% decrease in wages along with the benefit contribution deductions. It acknowledges that the benefit concessions are equivalent to nearly 2%, spread out over three years.

The Panel has concentrated its focus on the first five years of the City's 10-year plan, due to the inherent unreliability of projections further than five years into the future. The plan as updated May 2013 (CX 24) shows actual deficit spending in FY 2012, and projected deficit spending for all years following, even assuming that it could prevail on the additional 5% labor concessions it is demanding from all its units. The projected deficits do not assume full funding of the retiree medical program's Annual Required Contribution, which would increase costs by \$3.9 million annually in the short term. (CX 23) The projected deficits also do not assume any additional funding to bring the City's Workers Compensation program to recommended funding levels (see Section D below) or additional funding towards identified critical capital needs.

Fortunately, a projected \$3 million deficit in FY 2013 was avoided when additional revenues of \$2.4 million and deferred expenditures caused the City to end the

year with a surplus of about \$293,000, leaving a reserve of approximately \$28 million in its general fund reserve.⁴ This reserve level equates to approximately 22.7% of the City's FY 2013 General Fund expenditures. Approximately \$1.98 million of the unanticipated FY 2013 revenue consisted of property tax revenues — \$1.1 million in one-time distribution of redevelopment agency property tax funds, as well as recurring redistribution amounts of \$350,000, and \$580,000 attributable to improved secured property tax income. In addition, an unexpected \$596,000 in property transfer tax revenues and an additional \$379,000 in transient occupancy tax from motels came into city coffers. There were also some small unanticipated decreases in revenue and approximately \$1 million in deferred expenditures. If the one-time revenue were not counted, there would have been a deficit of about \$1.6 million. (CX 37 and CX 23)

a. Revenues

Property tax is the City's largest source of revenue. Although property taxes decreased during the housing market crisis of the Great Recession as homes were reassessed to reflect lower values, the Alameda County Assessor's Office released a statement in July 2013 that the assessed value of the local assessment roll increased 5.17% for FY 2014. (UX 1) The City, however, figured an increase of only 2.5% from the adjusted FY 2013 projection to the FY 2014 updated property tax projections in the 10-year plan. (CX 24) Based on revenue improvements during the 4th quarter of FY 2013, a minimum increase of \$580,000 in secured property tax should be considered in addition to the projected amount of \$38,141,000. (CX 23) During her testimony, City Finance Director Tracy Vesely indicated that further unanticipated increases in property tax revenue in FY 2013 were tentatively causing her to upgrade her projection of FY 2014 property tax revenues by \$2 million over the 10-year plan. The \$2 million also would be added in projections for later years. The City believes the bump in property tax revenue is temporary, however, and will subside once properties regain their pre-recession values. At that point, increases in assessed value will be limited to 2% annually under Prop 13.

⁴ The City's Comprehensive Annual Financial Report for the period ending June 30, 2013 will not be available until February 2014.

The Union counters that the Legislative Analyst's Office projects an average 7% increase in property taxes statewide over the next five years. (See UX 12) It entered into evidence the revenue forecast of its consultant, Beacon Economics. In making its assessment, Beacon looked at detailed forecasts of the nation, state, and East Bay and how historical revenue figures for the City have related to the national, state, and regional trends to forecast City revenues out to 2017-18. (City of Hayward Revenue Forecast, December 2013) Beacon sees property tax revenues growing 6.12% to \$41,579,000 in FY 2014. This would be higher than Vesely's tentative estimate of about \$40,200,000. For FY 2015, Beacon predicts a 6.33 % increase in property taxes to \$44,212,222. Another 5.62 % increase in FY 2016 would yield \$46,696,000 according to Beacon. Thereafter, Beacon forecasts property tax revenue growth to be between 4% and 5%.

The City argues that, to project higher property taxes, it would have to find that there are a significant number of properties being sold, resulting in a new, higher tax basis, and/or that there are significant numbers of new properties being built in Hayward. The City contends that most of the new residences under construction cited by the Union have either already been built – and therefore are already factored into the tax roll projections – or are planned by a contractor but not yet permitted (CX 65 and 66). The City also explained that it works with a consulting firm that tracks the residential real estate market to be able to project property turnover into the future.

The City asserts that Beacon's lack of local, Hayward-specific insights renders the consulting firm's projections less reliable than the City's. Certainly there is a different approach, but Beacon's representative, Jordan Levine, indicated that local information, such as number of building permits, was considered. Assessed valuation of Hayward properties and actual Hayward property tax revenue was included in the report. (p. 3) The Union's evidence shows that housing prices in Hayward increased 44% each month over the prior year in both May and June 2013. (UX 13) The Beacon report shows that the price appreciation continued into this fall, with prices rising nearly 40% in the third quarter of 2013 from the same time period in 2012. The Panel recognizes the need to be wary of any projection, but it finds no more reason to disregard the Beacon property tax predictions than to disregard the City's projections, which underestimated property tax in

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FY 2013 and property transfer tax in both FY 2012 (by more than 35%) and FY 2013 (by 17%). (CX 37) Like property taxes, property transfer taxes are affected by both the number of sales and sales prices.

The Union points out the City has under-projected revenue in the past. In FY 2007, revenue was under-projected by \$4.7 million; FY 2008 by \$.5 million; FY 2009 by \$1.8 million; FY 2010 \$5.4 million; FY 2011 by \$5.1 million; FY 2012 by \$3.4 million; and FY 2013 by \$4.8 million. (See UX 8.) The City's numbers differ. Looking at its adjusted projections mid-way through each year, the City claims it received \$3.7 million more revenue than expected in FY 2010, \$2.6 million more in FY 2011 (\$2.1 of which was one-time revenue), \$2.6 million more in FY 2012, and \$2.4 million additional in FY 2013 (\$1.1 million in one-time funds). (CX 37) Discounting one-time revenue, over the last three years, the adopted budget has underprojected revenue by about 2.5 to 3% each year. This accuracy rate is acceptable, according to advice from the Government Finance Officers Association (CX 40), but does demonstrate a conservative approach.

Beacon projects sales tax revenue and business license revenue to be lower than the City's projections. Its predictions for Transient Occupancy taxes (TOT) begin \$300,000 higher than the City's in FY 2014 and climb 3.5% to 4.5% each of the following four years. City Finance Director Vesely asserted that she does not expect TOT to climb since occupancy is already high in the City, and no new beds are planned. However, TOT revenue in FY 2013 was higher than projected by \$379,000, an amount not yet reflected in the City's 10-year plan.

Beacon forecasts monumental Property Transfer tax growth in FY 2014 through FY 2016. It asserts that rising housing prices (up 40% over a year ago) and more home sales (about 500 more annually by 2017-18 due to new housing developments and fewer distressed properties) will increase property transfer taxes. While Vesely pointed out that Hayward is not a high-income city and its public schools do not attract families, Jordan Levine testified that Beacon expects that Hayward's relative affordability will draw homebuyers from other places in the Bay Area.

Even with Beacon's higher revenue forecasts, however, the City would begin deficit spending by FY 2018, before factoring back in any unrealized labor cost savings if the City does not prevail in its 5% concession demand from all units.

b. Expenditures

The City's FY 2018 deficit arises primarily from two rapidly expanding expenditures – CalPERS contributions and transfers out of the general fund to that of the retiree medical trust and workers compensation fund.

The City's 10-year plan adopted the rates that CalPERS forecast in October 2012 for FY 2015, but for FY 2016 it used higher projections because of the indications at CalPERS that the board would change some of its assumptions and because of a change in rate methodology that the board adopted in April 2013. The projections for FY 2016 were provided by a third-party actuary, John Bartel, in July 2013. (CX 26) Unfortunately, even these higher projections are likely to be optimistic. In November 2013, the City was notified that the projections for miscellaneous PERS contributions were too low by 1% for FY 2015 and by 3% and 1.5%, respectively, for police and fire employees. The City's projections for FY 2016 were on target for miscellaneous employees but too low for police and fire by 2.5% and 1.2%. (CX 67) While the additional costs from the SEIU units are small since they comprise only 60% of the miscellaneous employees (UX 15), the costs for the City will increase \$1.2 million for all its employees in FY 2015 and \$790,000 in FY 2016. (CX 67, p. 4)⁵

The City has no choice how much it contributes to PERS. While the rates in the 10-year plan beyond FY 2016 are not projections by PERS, but by a third-party actuary, it would be unwise to assume they are too high, given the most recent experience where the actuary's rate predictions were low.

⁵ Employees share in the cost of the benefits. The miscellaneous employees pay 8% of their wages, and the City will contribute 22.1% of pay toward the pensions in FY 2015. Firefighters will pay 15% of salary towards their pensions, including 6% of the employer's 37% obligation. Police are paying 8.62% of the employer's 39.8% obligation in FY 2015. (CX 26, 67)

The other spike in expenditures which the City shows in its 10-year plan is transfers out to the retiree medical benefit fund. (CX 24, p.2) Although the ARC is \$6.6 million, the City has not made any substantial contributions to the fund beyond current year benefit payments. Each year that the full ARC is not made, the unfunded liability increases. Beginning in FY2015, it plans to gradually increase payments to the fund to \$4 million (the portion due to the unfunded accrued liability) by FY 2019.

The Union points out that, while GASB rules require that the City report its liabilities, it does not require the City to prefund them. The Panel finds that prefunding the benefits is a prudent move. Nevertheless, the Panel notes that beyond the \$108 Monthly Employer Contribution required by CalPERS, the supplemental retirement benefit is negotiable. In fact, the Union proposed in these negotiations an increase to a \$500 benefit. While the actuarial report assumes a 3.5% increase in benefit annually, the City has some say in whether the increases occur. If not, the liabilities would be somewhat lower than currently projected. (CX 36, p. 33)

c. Cost of Proposals

Looking at the proposals on these three compensation items — wages, health and welfare benefits, and retiree medical payments — the Union's proposal is problematic. The three-year proposal with 4%, 0% and 3% raises and a \$1,000 ratification bonus would cost the City \$3,500,000 over 3 years, of which \$2,099,970 would come from the general fund. (UX 22) The Union's costing adds back in the expense of increased pension rates and benefit concessions not realized.

The Union's evidence does not show where the additional money would come from, particularly for FY 2014. Assuming that Beacon's revenue estimates are accurate, the extra FY 2014 revenue of \$3,163,823 is only \$584,823 more than the City's projected general fund deficit of \$2,579,000. That deficit number assumes that the City is able to wrest an additional 5% in concessions from every bargaining unit. If the City is able to achieve only half of those labor cost savings (\$557,000), there would be less than \$30,000 for additional employee compensation. As discussed below, there is deficit spending in the enterprise funds that pay some of the employee costs. The proposed

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bonus and 4% wage increase alone would cost the City \$1,266,782, approximately \$760,000 of which would come from the general fund. The city would be dipping into reserves, even without addressing its unfunded liabilities for retiree medical payments and workers compensation.

In FY 2015, the Beacon revenue projection would leave the City with a general fund surplus of \$2,933,447, before adding back in the cost of unrealized employee concessions. The City knows, however, that it will be spending approximately \$1,215,000 more in pension costs than projected. If unrealized labor cost savings of \$1,114,000 are added, the general fund will have a surplus of only \$604,447. This is sufficient for a small pay raise. A 1% raise would cost the City's general fund approximately \$140,000 for this unit and about \$630,000 for all its employees (CX 24). As the firefighters unit has already agreed to concessions along with their 2% increase, there would be sufficient funds to pay a 1% raise to the remainder of the workforce.

In FY 2016, the difference between Beacon's estimate and the City's projected deficit is \$3,501,466. Additional unanticipated pension contributions of \$789,000 leave the general fund with \$2,712,466. Adding back in the unrealized labor cost savings leaves a surplus of \$1.6 million. The Union has estimated a 3% raise would cost the City approximately \$1 million for these two units alone, at least \$600,000 coming from the general fund. (UX 22) Nearly \$1 million more would be necessary to fund a 3% raise for the entire workforce, assuming a 1% raise in FY 2015.

The Union argues that despite 40% of the employees being funded out of enterprise funds, the City focused its attention only on the deficits in the general fund. There are 294.45 full time equivalents (FTE) in the Clerical and Maintenance units, of which 123.40 FTEs are funded out of the City's enterprise funds and 171.05 FTEs are funded out of the City's general fund.

The City runs its own water and wastewater systems and an airport. It also has funds for its stormwater and recycling enterprises. Its water and wastewater funds have large reserves of over 20%. The City asserts that a 50% reserve is needed in each fund due to the substantial need for capital improvement and repair of the infrastructure,

particularly in the event of an emergency like an earthquake. At the time of the biennial budget in June 2012, the water and wastewater funds were expected to run deficits through FY 2014, due to the increasing cost of water and decreased water usage. Ratepayer increases that went into effect in October 2013 are expected to eliminate the deficit spending in FY 2014 and increase reserves to approximately \$8.6 million in each fund in FY 2015. Projected reserves in FY 2017 are expected to be 22% for the water fund and 44% for wastewater funds. (CX 20, pp. 42, 44)

The Panel finds that deficit spending in the enterprise funds does not support a pay increase in FY2014, but the projection of increasing fund balances allows for small raises in future years.

In sum, the Panel finds that the City's total compensation for these two units is higher than the average of its comparators, primarily due to higher health and welfare benefit contributions. This factor warrants holding wage schedules steady during FY 2014 and reducing the City's contribution to dental and vision benefits for the clerical unit. However, inflation as measured by the CPI, together with renewed PERS contributions, is outpacing the growth of employees' paychecks, particularly for maintenance employees. Therefore, the Chair recommends a one-time \$750 payment for FY 2014. The payment is equivalent to a 1.8% raise for the lowest-paid full-time maintenance employees, which will nearly offset their loss of purchasing power. The payment will assist clerical employees with dental and vision contributions and ensure their pay keeps up with the cost of living.

A one-time payment addresses the City's interest in a structural reduction of personnel costs. Unlike a percentage increase to the wage scale, the one-time payment will not add to the City's structural deficit, but will alleviate the burden of rising costs for employees. It would be unwise to add an ongoing increase to the City's expenditures, particularly as it adds to PERS liabilities, but with the labor cost savings recommended by the Panel there would be sufficient money in the general fund to make the one-time payment. The payment would cost approximately \$211,000, only \$127,000 of which would come from the general fund. The City would achieve planned savings to the general fund from the clerical contributions to dental and vision insurance for half of FY

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2014 of approximately \$33,069 (CX 58), and ongoing annual reduction of \$58,000 in the workers' compensation benefit, discussed below in section D. Moreover, the City would also achieve the structural savings from forbearance of any ongoing raise. A payment of \$750 per full-time employee out of the general fund would require only \$127,000 of the surplus of \$584,823 expected if revenue comes in as projected by Beacon, an amount that would not require dipping into reserves and would not affect expenditures for FY 2015. Even if FY 2014 property tax revenues increase only \$2 million, as the Finance director tentatively estimates, there is sufficient money to fund the payment without reserves dropping below the level set by the City's 20% policy.

As discussed above, the evidence shows a likelihood of a sufficient increase in revenue to pay a 1% increase in FY 2015. By that time, both the cost of living and pay of comparators will favor a small raise.

In addition, the evidence supports a diminution in the City's maximum contribution to medical insurance premiums beginning January 1, 2015. It is unclear how the City calculated the labor costs saved by health care contributions in the 10-year plan, but it appears that the City predicted an increase of \$200 per employee per month in 2014 (CX 57). Paying the full family premium for the fourth-highest plan would result in a savings of \$350 each month for each employee with a family who enrolls in one of the highest two plans and smaller savings for those enrolled in the third-highest plan. The savings realized from the change will be sufficient to provide funds for an additional 1% raise on January 1 for a total of 2% in FY 2015.

The comparability evidence does not support an employee contribution for retiree medical insurance. In addition, if required of the Maintenance and Clerical units, the police and fire units would be contributing a smaller proportion of the normal cost of their retiree medical benefit than these units.

Because of the wide variability in revenue projections in FY 2016 and the inherent uncertainty in projecting further into the future, the Panel cannot recommend an unconditional raise over 2%. In addition to a 2% increase, an amount sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as

a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26.

Recommendation:

FY 2014: The Panel recommends a \$0% raise. The Chair recommends a \$750 payment on ratification, pro-rated for part-time employees, as a condition of the Panel's recommendation that Clerical unit employees shall begin making 20% contributions to dental insurance premiums and 50% contributions to vision premiums effective 1/1/2014.

FY 2015: The Panel recommends a 1% raise on July 1, 2014 and 1% raise on January 1, 2015. The Panel also recommends the City should reduce its maximum contribution to health insurance premiums to the family rate of the fourth-highest plan available through PERS, effective January 1, 2015.

FY 2016: The Panel recommends a 2% raise. In addition to a 2% increase, the Chair recommends that an amount that is sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26.

The Panel does not recommend that the clerical and maintenance units contribute to retiree health benefits.

C. FLSA –Sec. 4.03 of Maintenance MOU; Sec. 4.02 of Clerical MOU

Current Language (Clerical):

Work actually performed by full time employees in excess of eight (8) hours in a day for employees scheduled to work five eight-hour days, (or in excess often (10) hours for employees scheduled to work four ten-hour

days) shall be classed as overtime work. For the purpose of this section, time paid for but not worked shall not be counted in determining the amount of overtime, if any, worked in a single day. Work performed by an employee on a regularly scheduled day(s) off in excess of forty (40) compensated hours in that work week shall be classed as overtime work.

The City may require employees to work more than the normal eight or ten hours per day or forty hours per week and also to work outside the employees' scheduled work day or work week. Any work required of part-time employees in excess of forty (40) compensated hours in the employee's scheduled work week shall be classed as overtime work.

City Proposal as it would amend the Maintenance MOU:

~~Any work required in excess of the normal work day or work week shall be classed as overtime work.~~ Employees eligible to receive overtime compensation, as determined under the provisions of the Fair Labor Standards Act, shall receive overtime for work performed in excess of 40 hours per week. Only actual hours worked shall be counted toward the 40-hour threshold for purposes of determining if an employee is entitled to receive overtime compensation. ... [The remainder of the language in the City's proposal was not addressed in the factfinding and will not be addressed.]

Union proposal: No change.

The City currently pays more for overtime work than required by the Fair Labor Standards Act. Pursuant to California law, employees are entitled to overtime after eight (8) hours of work in a day or forty (40) hours of work in a week, but public sector employers are not subject to all California wage and hour laws. Changing to minimum FLSA overtime pay requirements eliminates daily overtime and only provides for overtime once an employee works forty (40) hours in a week. Based on a sample of 10 employees from each unit who earned overtime in 2012, the City estimates that approximately 26% of its overtime costs for clerical workers and 21% of its overtime costs for maintenance would not be required if paying only the FLSA minimum. It estimates it would save \$87,816 annually if its proposal were adopted. (CX 54) The proposal affects approximately half of the employees in the Clerical unit and about 90% of those in the Maintenance unit.

Neither party supplied comparator information relating to the practice of other public agencies.

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In light of the compensation recommendations above and no information showing that the City's overtime practice is more generous than the comparators' obligations, the Panel does not support a change.

Recommendation: No change.

D. WORKERS COMPENSATION- Sec. 14.04 of both MOUs

City Proposal:

For employee injury or disability falling within the provisions of the State Workers' Compensation Disability Act, disability compensation at the rate allowed under said Act shall be the basic remuneration during the employees' period of disability. Compensation under this act will be provided through payroll or the City's third party administrator. Employees may elect to use their own personal paid leave to supplement any worker's compensation benefits received. If any paid leave is used, the employee must contact Human Resources Department and integrate the leave with the temporary disability benefits paid under this Act, so that compensation does not exceed 100% of an employee's regular pay.

The City reserves the right to withhold payment of any disability benefits until such time it is determined whether or not the illness or injury is covered by Workers' Compensation.

Union Proposal: No change.

The City currently provides a higher payment to those on workers compensation benefits than required by law. It pays 100% of the employees' salary, whereas the law requires only a 66% payment. Currently, the City will supplement the difference between an employee's salary and workers compensation for up to one year. The City's proposed language eliminates this supplement and only allows an employee to use personal paid leave to make up the difference. Based on an average of actual costs in the two units from 2010-2012, the City would save \$98,918 annually. (CX 55)

A decrease in the benefit paid to injured workers will affect not only the annual outlay for workers compensation benefits, but also the amount needed to fund the City's self-insured workers compensation system. One of the choices the City made when putting together the 10-year plan was an increased contribution to the system. The City hired the Bickmore consulting firm to report its liability as required by GASB 10.

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Bickmore found that the City's liability as of June 30, 2012 was \$10,407,000, which climbed to \$10,876,000 by June 30, 2013. The City's workers compensation fund in April 2013 contained \$2,967,000. (CX 35) The current contribution of \$310,000 annually is insufficient to fund the system at even the 70% confidence level considered minimum by Bickmore. The City has decided to fund its liability at this level over the next 10 years.

The Panel also notes that a 100% payment gives an injured employee little incentive to return to work if the injury heals within the year the City provides the extra benefit.

The Union claims that this proposal was first made in the LBFO, and the parties therefore did not have the chance to vet it during the negotiations process. Normally, this fact would weigh heavily against any changes, as a party should not be able to gain through impasse something it has not even proposed during bargaining. In this case, however, the accrual of liabilities and the lack of incentive to return to work weigh strongly in favor of a change. In light of all these factors, a small change is recommended.

Recommendation: The Panel recommends that the language in the current contract be amended as follows: "additional compensation equal to the difference between 80 percent of said employees' regular pay and the disability compensation allowance shall be granted for up to one year during any three year period regardless of the number of injuries during that three year period."

E. OTHER ISSUES in the Last, Best and Final Offer and Union Proposals

Before the hearing, the Panel asked the parties to prioritize their issues so that the hearing could focus on those most important to the parties. At the beginning of the hearing, there were over 200 proposed contract changes, some of which were addressed above. The parties continued to negotiate non-economic and small economic items during the factfinding process to reduce the number of issues submitted to the Panel. No oral presentations were made concerning these issues, but the parties presented support for

their positions on these issues in their briefs to the Panel. If the party proposing a change did not address the issue in its brief, the issue will not be considered.

1. Management Rights

City Proposal:

The City's exclusive rights which are not subject to meet and confer include but are not limited to:

- 1) Determine the City's mission and that of its constituent departments.
- 2) Set standards and levels of service.
- 3) Determine the procedures and standards for hiring of employees.
- 4) Determine the procedures and standards for promotion of employees.
- 5) Direct employees and assign work on a day-to-day basis.
- 6) Establish and enforce uniform, dress and grooming standards.
- 7) Determine the methods and means to relieve employees from duty when work is not available or for other lawful reasons.
- 8) Create efficiency in City operations.
- 9) Determine the means and methods to be used to achieve standards and levels of service.
- 10) Determine the numbers, skill-types and organization of the City's workforce.
- 11) Determine job classifications and descriptions.
- 12) Determine means and methods to finance City operations.
- 13) Determine facilities, technology and equipment used by the City.
- 14) Contract for any service or work needed by the City to the extent allowed by law.
- 15) Schedule employees and work.
- 16) Establish performance standards, evaluations and improvement plans.
- 17) Discharge and discipline employees.
- 18) Take all lawful necessary actions to fulfill its mission during an emergency

Union Proposal: No change.

The City notes that both the Clerical and Maintenance MOUs include language setting forth SEIU Local 1021 rights, but they fail to address management rights. The City therefore believes it is appropriate to adopt its proposed new language. The Union contends the City's has proposed numerous provisions reducing employee security. It does not want to provide the City with enumerating rights that go beyond what is already provided in the broad language of the existing preamble, which states, "This Memorandum of Understanding is subject to all applicable federal laws, state laws and the Charter of the City of Hayward; and all ordinances, resolutions, Administrative Rules

and Personnel Rules of the City except as expressly provided to the contrary by this Memorandum of Understanding.”

While it is true that most MOUs have a management rights clause, they vary in the specific rights enumerated. Moreover, they usually make clear that the rights are limited by the terms of the MOU. Many of the rights enumerated in the City’s proposal are working conditions often negotiated with unions and are not typical. The Management Rights clause proposed by the City is not supported by specific comparability data. Therefore, although some of the enumerated rights are well recognized management rights and would be a reasonable addition to the contract, the Panel will not attempt to pick and choose among them.

Recommendation: No change.

2. Severance Pay

City Proposal:

The parties recognize that the City may sub-contract work performed by employees in the representation unit for reason of economy and/or efficiency. The City will notify the Union in writing at least ~~sixty (60)~~ thirty (30) days before subcontracting work if such subcontracting will result in the layoff or bumping of employees. In the event employees are placed on layoff as a direct result of the City's subcontracting such work, said employees shall be entitled to severance pay in accordance with the following conditions...

Union Proposal: No change.

The City proposes reduction in the notice period because it believes it can complete the meet and confer related to contracting-out in one month and does not want to incur unnecessary delays. The Union points out that, in June of 2000, the Maintenance Chapter and Clerical Chapter and the City of Hayward agreed to a side letter (see side letter 14 to the Maintenance MOU) forbidding subcontracting work within the bargaining units with narrow exceptions. The Union asserts the City’s proposal seeks to abrogate this side letter by permitting the City to subcontract work in the unit for vaguely worded “reasons of economy and efficiency.” The Panel notes that the current MOU still maintains the “economy and efficiency” language.

The City has offered no evidence to show how the 60-day notification provision has worked to its detriment.

Recommendation: No change.

3. Layoffs

Current Language:

Whenever there is a lack of work or a lack of funds requiring reduction in personnel in a department or division of the City government, the required layoffs shall be made in such job classification(s) set forth in the Classification Plan of the City of Hayward as the Department Head may designate in accordance with the following procedures. Vacant positions which are affected by proposed staff reductions will not be filled prior to the implementation of layoff activity.

City Proposal:

Whenever in the sole discretion of the City, one or more positions are to be eliminated for reasons of lack of work or a lack of funds, reorganization, or other reasons of economy, efficiency or lack of need an employee filling such a position may be laid off or demoted. The departments and classifications subject to layoff shall be determined by the City Manager or designee.

Union Proposal: No change.

The City offers no support for adding to the description of circumstances which will warrant a layoff or for deleting language ensuring that vacant positions will not be filled prior to the implementation of layoff.

The Union asserts the City is attempting to expand its management rights to eliminate jobs for reasons as vaguely worded as “reasons of economy and efficiency” without Union input, which runs in direct violation to the subcontracting side-letter.

Recommendation: No change.

4. Order of Layoffs

Current Language:

- A. Employees shall be laid off in inverse order of their length of service within the affected job classification.
 - 1. Length of service for the purpose of this Section 3.01 shall mean an employee's continuous uninterrupted service within a classification from the effective date of appointment as a probationary or part-time employee in that classification.
 - 2. An interruption in length of service within a classification shall occur as a result of anyone of the following:
 - a. Discharge for cause

- b. Voluntary resignation
- c. Retirement for service or disability
- d. Absence from work for thirty-six (36) consecutive months because of layoff
- e. Failure to return from layoff as provided in Section 3.02
- f. Failure to return from an approved leave of absence upon the date specified for return at the time said approval was granted.

Provisional and acting appointments to a classification shall not be construed as service in such classification unless such provisional or acting appointment was contiguous with appointment to such classification in a probationary or part-time status.

3. Whenever the effective date of appointment to a classification is the same for two or more employees, the original date of hire as a probationary or part-time employee with the City shall be used to determine which employee has greater length of service within the classification. The employee with the earlier original date of hire with the City shall be considered to have the greater length of service within the classification in this situation.

B. Within each affected job classification all provisional employees shall be laid off before probationary employees and all probationary employees shall be laid off before any regular employees provided, however, that part-time employees whose length of service is less than any probationary or regular employee shall be laid off before such probationary or regular employee. Thereafter, if additional reductions in personnel are required, those employees with the least length of service within the affected classification shall be laid off. Any temporary hire, assigned to a budgeted position in a class where layoffs are required, will be laid off prior to the layoff of a regular or probationary employee in that class.

City Proposal:

Employees shall be laid off in inverse order of their length of seniority. Seniority is determined based upon date of hire in the classification and higher classifications in the department affected by the layoff. A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required. Within each classification in the department affected by the layoff, employees will be laid off in the following order, unless special skills are required: temporary, provisional, probationary, and regular.

In cases where there are two (2) or more employees in the classification from which the layoff is to be made who have the same seniority date, such employees will be laid off on the basis of the last evaluation rating in the class, providing such rating has been on file at least sixty (60) days and no more than twelve (12) months prior to layoff as follows: first, all employees who have ratings Needs Improvement: second, all employees

who have ratings of Meets Standards, third, all employees having ratings of Exceeds Standards.

Union Proposal: No change.

The City asserts its proposal is general clean-up to reflect past practice related to order of layoff. In addition, the City is adding two elements for consideration of layoff order. First, the City adds language providing that employees with special certifications or skills may receive special consideration over more senior colleagues. Second, the City includes language providing that performance in the current classification be a consideration in addition to seniority. The City believes use of only seniority as a factor in layoff considerations is a problem because higher-quality employees could be laid-off, which is not in the public interest.

The Union understands the City's interest in avoiding laying off individuals with special jobs skills. However, it asserts the City's language goes too far by permitting the City to exempt less senior employees for layoff based on non-grievable performance ratings. Even if an employee had standing to grieve his or her own rating, he or she would not have standing to grieve a false positive review of another employee. The Union asserts the language would effectively allow the City to reclassify positions by placing all employees in the classification with the same seniority date and then hand-picking the employees for layoff.

Recommendation: The Panel recommends that the following sentence be added to section A: "A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required." All other language should remain unchanged.

5. Seniority

City Proposal:

In a reduction of force, the employee with the shortest length of service in the classification in the department affected by the layoff shall be the first employee laid off and in rehiring, the last employee laid off shall be the first employee rehired, provided, however, that the employee retained or rehired is capable, in the estimation of the City Manager or designee, of performing the work required.

The following will be included in computing an employee's length of service for purposes of determining seniority:

1. Time worked in a permanent or probationary status;
2. Time spent on an authorized paid leave; and

The following days will not be included in computing an employee's length of service for purposes of determining seniority:

1. Time worked in an extra-help, provisional, temporary, or seasonal status;
2. Time spent on an unpaid leave of absence;
3. Time spent on a suspension; and
4. Time spent on a layoff.

The Union states it did not oppose the City's proposed language for this section. However, the City refused to agree to this section without the Union agreeing to all the other sections of the broader layoff section.

Recommendation: The Panel recommends the Parties agree to the proposed language.

6. Notice of Layoff

City Proposal:

Fourteen (14) calendar days prior to the effective date of the layoff of an employee, the City Manager or designee shall notify the employee of the layoff. Notice can be 'provided either by certified or registered mail, return receipt requested, or by personal service. If the notice is provided by mail, the fourteen (14) day notice period runs from the date of post-mark, not when the employee signs the return receipt. A copy of any layoff notice shall be placed in the employee's personnel file.

Prior to employees receiving notice under this Section 3.04, the Human Resources Department shall furnish to affected employees and the Union, upon request, the status registers for all affected classifications within the representation unit. Said lists shall include the names of all present employees who have held these classifications and their appointment dates thereto.

The Union does not oppose this section of the proposed language.

Recommendation: The Panel recommends the Parties agree to the proposed language on Notice of Layoff.

7. Employee Options

City Proposal:

A regular employee who has been notified that he/she will be laid off from his or her current position shall have the following options:

1. Displacing a City employee with less service in a parallel or lower classification in the department affected by the layoff in which the employee held prior permanent or probationary status (“bumping”) For purposes of this section, “parallel” shall mean a classification in which the current wage range is equal to or no more than two and a half percent (2.5%) higher than the wage range of the classification from which the employee is laid off. If an employee has not held status in a parallel or lower classification in the department, then no displacement rights accrue to that individual. All employees must exercise displacement rights within five (5) working days after notice of the layoff is provided by written notice to the Human Resources Director. If this choice is not exercised within the specified time, it is automatically forfeited. The employee exercising the displacement privilege will displace employees in lower classifications in the inverse order of seniority. Employees who displace other employees will be paid at the rate for the lower classification.

2. If an employee has not held status in a lower classification in the department or if such lower classification is occupied by a more senior employee the employee shall be entitled to fill a vacant position in the classification held at the time of layoff in another City department. If there is no vacancy in the classification in another City department then the employee may be eligible to fill a vacant position in another City classification provided he or she possesses the necessary skills and fitness for that position as determined by the City Manager or designee. An employee who is transferred to a vacant position will be paid at the rate of pay for that position. Any employee who does not accept a transfer within five (5) working days after a Notice of Transfer is given will have automatically forfeited the ability to transfer.

3. Accepting layoff.

The Union states it substantially agreed to the City’s language, provided the City agrees to provide employees 10 working days to exercise displacement rights, instead of 5 working days. The existing MOU provides for 5 working days.

Recommendation: The Panel recommends the Parties agree to the City's proposed language regarding Employee Options.

8. Right of Return following Layoff (M only)

Current Language:

As position vacancies occur, employees on layoff and those occupying positions to which they have bumped shall be afforded return rights in the order of their length of service in the classification(s) in which such vacancies occur.

A. An employee shall have ten (10) calendar days from the mailing by certified mail of a notice of return to the address of record on file in the Human Resources Department to indicate acceptance of such return and his/her agreement to report for work as specified in the notice.

B. Employees in layoff status shall retain all credited sick leave earned but unused at the time of layoff. An employee on layoff shall not earn vacation leave credit while in layoff status. Upon an employee's return from layoff he/she shall be credited with proportionate vacation leave for the balance of the calendar year. The amount of such credit shall be based upon the continuous uninterrupted service with the City including time spent in layoff status. Use of vacation leave so credited shall be subject to the provisions of Section 12.02 of this Memorandum of Understanding.

C. Employees who are displaced from their classification by virtue of layoff shall be placed on a reemployment register for the classification they held at the time the layoff occurred, hereinafter referred to as the "primary" register. They shall also be placed on reemployment registers for classifications previously served in, hereinafter referred to as "secondary" registers. If an employee fails to respond to such notice of return within the prescribed time period or declines to return from layoff to a secondary register classification his or her name shall be removed from said secondary register and employee shall no longer be eligible for recall to that classification. If an employee fails to respond to notice of return within the prescribed time period or declines return to the primary register classification employee will be considered to have voluntarily resigned employment with the City.

D. Primary and secondary reemployment registers shall be valid for a period of two years.

[The Clerical MOU's section D is entirely different and is followed by two more sections, E and F.

City Proposal:

Employees who are displaced from their classification by virtue of layoff shall be placed on a reemployment list as specified:

1. The reemployment eligible list for the position in the department from which the employee was laid off (“primary register”).
2. The reemployment eligible list for any parallel or lower classification in the department from which the employee was laid off (“secondary register”). Each re-employment eligible list shall consist of the names of employees and former employees having probationary or permanent status in the position for which the list was created and who were laid off. The rank order on such list shall be determined by relative seniority calculated pursuant to Section 3.03. Such list shall take precedent over all other eligible lists in making appointment to the position for which the list applies.

As position vacancies occur, employees on layoff and those occupying positions to which they have bumped shall be afforded return rights based on the order in which their names appear on the reemployment eligible list for the position. An employee's name shall remain on the list for a period of one (1) year, unless such person is sooner re-employed or removed from the list as provided in this section.

Union Proposal: No change.

The City gave no rationale for changes to this section.

The Union objects that this language effectively incorporates the City’s new seniority language (City’s proposal paragraph listed as number 2) whereby it limits seniority to the classification. Because the City’s new seniority language effectively eliminates meaningful seniority protections, it cannot agree to this section. The Panel notes the Union did not object to the Seniority section of the City’s proposal, but assumes the Union’s objection is based on the seniority tie-breaking proposal.

Recommendation: No change.

9. Meal and Rest Periods (M only)

City Proposal:

Full-time employees shall be assigned to receive a one-half (1/2) hour unpaid meal period each day within a two (2) hour period at the midpoint

of each shift and a 15 minute paid rest period during the first half of the work shift and another 15 minute paid rest period during the second half of the work shift. In the event an employee does not receive a meal period or rest period he or she shall be compensated at the overtime rate for said meal or rest period or shall be permitted equivalent time off the same day. The City shall make reasonable effort to insure that employees' meal periods are uninterrupted.

Union Proposal: No change.

The City's proposal limits the application of the section to full-time employees. The City contends the parties have no history of providing these benefits to part time employees, and that the Union refuses to agree to the proposed language because it seeks to add meal and rest period language for part-time employees. The Union contends the City's language does not take into account that there are part time employees who work eight hour shifts who would be stripped of meal and rest break protections.

Neither party provided evidence of its position as to past practice, and there was no evidence of the conditions in comparator cities.

Recommendation: No change.

10. Attendance at Evening Meetings (C only)

City's Proposal:

An employee, who, in the performance of his or her duties, is required to be in attendance at an evening meeting shall be ~~guaranteed a minimum of three (3.0) hours compensation~~ compensated at the applicable straight time or overtime rate for such assignment.

Union Proposal: No change.

The City's proposed language eliminates the minimum amount of compensation (at least three hours of work) for employees who are required to attend evening meetings. This proposal is part of the City's overall goal to move to minimum FLSA compliance. Instead of paying employees fixed minimums, the City seeks to pay for actual time worked.

The Union contends the existing provision permits adequate compensation for major disruptions to limited sleep time for the jail workers, who work in a 24 hour

operation. The meetings are regular and occur at the most inconvenient times for employees on swing or night shifts.

The City's survey of comparators shows that none provide a minimum guarantee for meetings outside of shift hours. (CX 44, p. 3)

Recommendation: The Panel recommends the Parties agree to the City's proposal.

11. Overtime Regulations (M only)

City proposal: Delete the following language from the MOUs:

~~"The present ordinances, resolutions, Administrative Rules and Personnel Rules pertaining to overtime compensation and compensatory time off shall be continued without change during the fiscal year except as provided in this Memorandum of Understanding."~~

Union Proposal: No change.

The City proposes to delete the provision because it prevents the City from amending a variety of City employer-employee documents irrespective of any impact on the MOU and/or whether the employees are even subject to the labor agreement. The City contends the language effectively handcuffs the City on all overtime issues regulated by policies other than the MOU and is therefore inappropriate.

The Union points out the elimination of this section paves the way to eliminating daily overtime and moving to the federal weekly overtime standard, which is less protective than law applicable to California private sector employees.

Recommendation: No change.

12. Night Shift Differential (M only)

Union proposal:

Employees assigned to scheduled shifts in which the employee works five (5) or more hours between the hours of 3:00 P.M. and 11:00 P.M. shall be paid an additional five percent (5%) per hour for all hours worked on such shift. Employees assigned to scheduled shifts in which the employee works five (5) or more hours between 11:00 P.M. and 7:00 A.M. shall receive an additional eight percent (8%) per hour for all hours worked on such shift. The City will make every effort to provide employees at least twenty-four (24) hours advance notice of a change in shift assignment.

City Proposal: No change.

The Union proposes to increase the night shift differential from the fixed dollar amounts included in the current MOU (\$1.15 per hour and \$1.40 per hour) to 5% for employees working between 3 p.m. and 11 p.m. and 8% for employees working between 11 p.m. and 7 a.m. In light of the City's request for structural concessions and its desire to focus all compensation enhancements on base wages starting in FY 2016, the City declined this proposal.

The Union proposed moving from a flat amount to a percentage of the employee's wage so that higher paid and generally more senior employees receive a larger differential.

The City's survey shows that agencies have a variety of practices for night shift differential pay. Three comparators have no night shift. Two pay a higher fixed differential than the City. One pays a monthly differential. Four pay it as a percentage of salary after a minimum number of hours worked; the percentages are at least 5%. Most differentiate between evening and graveyard shift hours. (CX 43, p. 2)

The Panel finds that the City's night shift differentials are lower than the average paid by the comparators. In light of the City's financial situation, however, the Panel recommends only a small increase in the fixed rate begin in FY 2015.

Recommendation: The Panel recommends the night shift differential for the evening shift be raised to \$1.30 for employees who work after 4:00 p.m. and the differential for the graveyard shift be increased to \$1.60 for those who work between 11 p.m. and 7 a.m.

13. Certification Fees (M only)

City Proposal:

When the City or State requires that employees possess a certificate as prerequisite to the performance of their job duties, the City shall reimburse said employee for any fee involved in the issuance or renewal of said certificate. Employees shall suffer no loss in pay for time spent taking qualifying examinations during regularly scheduled work hours for said certificates. However, the City will not pay overtime for time spent taking

qualifying examinations outside of regularly scheduled work hours. Fees for Drivers licenses and time spent acquiring them are not covered by this provision.

Union Proposal: No change.

The City argues it should not have to pay employees who take these tests during non-working hours. They would do so on their own time, just as they would when taking a driving test, purchasing work clothes or doing other tasks necessary to make themselves ready to work.

The Union contends work certifications are a requirement of the job and the certification processes often occur on the weekend, when employees are not generally scheduled to work. The Union also contends that not paying employees to attend required certification processes is unlawful under both the California Labor Code and the Fair Labor Standards Act.

Recommendation: No change.

14. Police Department Training Pay (C only)

Union Proposal:

Police Department employees assigned to train new Police Department employees as required by the Commission of Police Officer Standards and Training (POST) and/or Standards and Training for Corrections (STC) shall receive 5% differential pay to no more than four (4) assigned JTO's (Jail Training Officers) and 5% differential pay to no more than four (4) assigned CTO's (Communications Training Officers) on an on-going basis on the condition that employees receiving the differential pay have obtained training certificates and will provide training as needed for the duration of the assignment. 2.5% training pay, under the terms of the current agreement, will be paid to any additional employees for assigned training responsibilities for the duration of the assignment, including, but not limited to records clerks, animal care attendants, crime scene technicians, property and evidence technicians, and secretaries. Selection of employees for a training assignment and removal of employees from training assignment shall be at the sole discretion of the Chief of Police. Any other employee whose job description includes training provisions shall receive 2.5% training pay.

City Proposal: No change.

The Union proposes delineating the training duties that should receive a training pay differential. The Union also wants to expand this pay unit-wide to any employee doing any training in any City department.

The City contends the Union's proposed expansion would require the City to pay a training differential for literally any kind of training of another employee of any kind, including showing a new employee how to log onto a City computer. The City does not believe that any changes to this section are warranted and is not aware of any labor market justification for doing so. Furthermore, the City has been seeking modest concessions from the employees and offering across-the-board wage increases in exchange. The City therefore is not interested in making numerous additional compensation enhancements to various classifications.

Recommendation: No change.

15. Sewer Maintenance Differential (M only)

Current Language:

An employee in the classification of Utility Worker, Laborer or Utility Leader who is assigned to operate either the Hydro cleaner, the large sewer rodding machine, the bucket machine, or TV van shall receive a salary differential of five percent (5%) above the salary step currently held for all hours during which the employee actually operates the aforesaid equipment. This salary differential shall not apply during period of paid leave nor during the use of accrued compensatory time.

City Proposal:

3.174% shall be rolled into the base salary of eligible employees.

Union Proposal: No change.

The City seeks to roll this differential pay into eligible employee's base salary. The amount is calculated at 3.174% of salary instead of the 5% in the current MOU because the current provision allows for the receipt of this pay only during the hours in which employees operate certain equipment, not for all hours worked. On average, employees receive 3.174% differential pay for the tasks outlined in this section. The City believes this change is cost-neutral to the employee and will be easier to administer. The Union expressed no reason for its desire to maintain the current language.

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The Panel, however, is concerned that a change could be inequitable if some employees seldom earn this differential while others perform this work frequently. Without information that the eligible employees generally perform about the same amount of sewer maintenance work, the Panel cannot recommend rolling the differential into base pay.

Recommendation: No change.

16. Standby Provisions (M only)

Union Proposal :

a. Standby Pay

Employees who are required to be available on a standby basis for possible service calls during their off shift hours shall receive a standby allowance as follows:

1. Employees on standby on weekdays (i.e., a sixteen (16) consecutive hour period commencing with the end of the regular scheduled work shift Monday through Friday) shall receive a standby allowance of ~~one (1)~~two (2) hour's pay at the employee's regular hourly rate for each weekday night of standby required.

2. Employees on standby on regularly scheduled days off and on holidays (i.e. a twenty-four (24) consecutive hour period commencing at 8:00 A.M.) shall receive a standby allowance of the ~~two (2)~~four (4) hours pay at the employee's regular hourly rate for each of the aforementioned days of standby required.

An employee on standby who is called out on a service call shall receive, in addition to the standby allowance provided above, compensation at the overtime rate for work actually performed during such standby. In the event an employee on standby is called out on a service call(s), the employee shall be guaranteed a minimum of two (2) hours work or two (2) hours pay at the overtime rate for the entire standby period as defined above.

City Proposal:

c) Standby ~~Beepers~~ Communication

The City will provide cell phones or other communication devices ~~electronic beepers~~ to employees assigned to standby pursuant to this Memorandum of Understanding.

Employees are not eligible for standby pay if they are unable to work due to illness on the day standby pay would have otherwise occurred.

The City proposes to change the language to: (1) replace outdated reference to pagers with an up-to-date cell phone reference and (2) ensure that employees do not receive standby pay when they are out on sick leave, workers compensation leave or any other status in which they were medically unable to work.

The City has objected to any increase in standby pay on two grounds. First, the Union has been unwilling to bargain an increase in this compensation in conjunction with City requested concessions. Second, the City believes that to the extent it can increase compensation both parties are best served by making adjustments to base wage.

The City's survey of comparators shows that there is some variation in the method of compensating standby assignments. Two contracts have no provision for standby assignments. Vallejo's provisions are worded differently, but would seem to pay practically the same as the City. In Alameda, standby on weeknights earns 1.5 hours pay and on scheduled days off earns 3 hours pay. San Leandro pays similarly to the City, except that standby on a holiday earns 3 hours pay. Two other cities schedule standby in 1-week assignments. Assuming standby on five weeknights and two scheduled days off, they each pay at least 10 hours overtime for the assignment. The City's pay would be 9 hours of overtime. Two other cities pay flat rates either by the week (\$350/wk) or by the time of standby assignments (\$50 for weeknights, \$73 for weekends and holidays). The City assumed a \$35 per hour average rate of pay, and asserted that seven other cities would compensate a weeklong standby assignment more highly. (CX 43, p.4)

The Panel finds an insufficient difference in pay to justify an increase at this time.

Recommendation: The Panel recommends updating the MOU's reference to communication devices.

17. Pesticide Differential (M only)

Union Proposal: Add employees who operate a mobile sprayer as eligible to receive the differential described in the current contract language:

An employee who is assigned to operate and/or drive a motorized sprayer of fifty (50) gallons capacity or larger shall receive a salary differential of five percent (5%) above the salary step currently held for all hours during which the employee actually operates the aforesaid equipment. Only those

employees who possess a valid Agricultural Pest Control Applicator's License, and who possess the requisite knowledge and experience to safely and effectively operate the equipment shall be eligible to receive this salary differential. This salary differential shall not apply during periods of paid leave nor during the use of accrued compensatory time.

City Proposal: No change.

Currently, the City pays employees a 5% differential for all hours in which an employee operates a motorized pesticide sprayer of fifty (50) gallons or more only to those employees who possess a valid Agricultural Pest Control Applicator's License. However, many City employees disseminate pesticides via a mobile sprayer, rather than a motorized sprayer of fifty (50) gallons or more. The purpose of this pesticide differential pay is to compensate employees for the increased health and safety risks associated with pesticides. The Union contends that employees who are using a mobile sprayer assumes an equal if not greater risk to their health and safety as an employee operating a motorized pesticide sprayer.

The City's survey shows that only Vallejo pays a pesticide license differential. (CX 43, p. 9)

Recommendation: No change.

18. Water Treatment Certification Differential (M only)

City Proposal:

The City's last, best, and final offer eliminated water treatment certification differential.

Union Proposal: No change.

The City proposes deleting this provision because the city no longer operates a water treatment facility. The Union states the City still requires some employees to hold a Water Treatment certifications and objects to the attempt to eliminate this differential.

The Chair is perplexed why the City would require a certificate for performance of duties it no longer needs its employees to perform. As the Chair suspects there is some missing evidence, the Chair will not recommend any change to the section.

Recommendation: No change.

19. Heavy Equipment Repair Differential (M only)

City Proposal:

0.915% shall be rolled into the base salary of eEmployees in the classification of Equipment Mechanic I and Equipment Mechanic II, ~~shall receive premium pay of five percent (5%) for hours worked performing maintenance and repair of City-owned vehicles that are 26,000 lbs. or more GVWR (gross vehicle weight); street sweepers; heavy construction equipment, and fire service apparatus.”~~

Union Proposal: No change.

The City explains the amount is calculated at 0.915% of salary instead of the 5% mentioned in the current MOU language because the current provision allows for the receipt of this pay only during the hours in which employees operate certain equipment, not for all hours worked. On average, employees receive .915% differential pay for the operation of heavy equipment. The City believes this change is cost-neutral and will be easier to administer. The Union expressed no reason to decline the proposal.

Again, the Panel is concerned that a change could be inequitable if some employees seldom earn this differential while others perform this work frequently. Without information that the eligible employees generally perform about the same amount of sewer maintenance work, the Panel does not recommend rolling the differential into base pay.

Recommendation: No change.

20. Distribution Certification Differential (M only)

City Proposal:

Employees who attain a State approved D-4 Certification shall be entitled to receive a five percent (5%) differential. The position descriptions for each affected classification shall be amended to reflect the State minimum certification requirements.

Union Proposal:

The following classifications shall receive five percent (5%) Differential for maintaining a State approved D-3 level of certification:

- Senior Utility Leader Field Services

- Senior Utility Leader Customer Services

Other Employees who attain a State approved D-3 Certification shall also be entitled to receive a five percent (5%) differential. The position descriptions for each affected classification shall be amended to reflect the State minimum certification requirements. This five percent (5%) differential shall be rolled into the employee's base salary.

Currently, employees who hold a D-3 level certification receive a 5% differential. The Union proposes keeping the current contract language and rolling this differential into the employee's base salary for ease of implementation.

The City proposes increasing the requirements for obtaining this differential because D-4 is the new standard and therefore the level that should receive incentive pay. Under the City's proposed language, employees who hold a D-3 certification would no longer receive the differential pay. The City explains elimination of job classification labels opens the certification pay up to additional classes, if and when justified.

Most City comparators do not provide water service. Of those that do, only one offers a differential of 1 percent. (CX 43)

Recommendation: If it is true that the D-4 level certification is needed for work performed by the City, the language should be changed to reflect the change in the law. The Panel does not recommend a change rolling the differential into base pay.

21. Bilingual Pay

City Proposal:

Department heads shall identify those Employees who are required in the performance of their duties to converse with the public in a language other than English, and Employees so designated, who have demonstrated their competency in a second language through a fluency test administered by the Human Resources Department, shall receive bilingual pay in the amount of ~~Thirty thirty Dollars~~ dollars (\$30) per pay period. Within thirty (30) days of MOU ratification all incumbents who receive bilingual pay shall re-certify through the Human Resources Department. until such time as the designation is revoked.

No more than once every twenty-four months, the Department Director or designee may require an employee receiving bilingual pay to demonstrate continued competency in a second language as a condition of continuing to

receive pay under this section. Employees who do not demonstrate continued competency will cease receiving bilingual pay until such time competency is again demonstrated.

Union Proposal: No change.

The City seeks to ensure that bilingual employees actually have usable bilingual skills. The Union agrees in principle. The Union, however, wanted the City to guarantee that any employee who failed the bilingual test would be replaced by another bilingual employee. The Union did not want the City's overall investment in bilingual compensation reduced. The City cannot guarantee that there will always be another newly-certified bilingual employee and therefore declined the Union's demand. The Union believes that the City's outright rejection of this concept reveals an intention to eliminate the cost of paying employees bilingual pay.

The Panel agrees that the City should not pay for competencies an employee does not possess. If there is a documented reason to question competency, the City should have the contractual leeway to test an employee's bilingual competence.

Recommendation: The Panel recommends that the Parties agree that the language in the second paragraph of the City's proposal should be added to this section together with language that permits the City to test when there is a documented reason to question bilingual competency.

22. Thermoplastic Hazard Differential, Homeless Encampment Cleanup Differential, Arborist Differential

Union Proposal: The Union proposes a salary differential of five percent (5%) above the salary step currently held for all hours during which the employee actually performs the work.

City Position: No change.

The Union states that numerous City employees work with thermoplastic when maintaining City streets. Thermoplastic is a hot-applied road marking compound for the creation of highly reflective striping on roads. Thermoplastic contains lead chromate which is known to cause cancer, cause damage to unborn children, and cause harm to aquatic life. Furthermore, thermoplastic must be heated to high temperatures for proper application, potentially exposing employees to severe burns. The Union contends

employees should be compensated for the health and safety risks they encounter when exposed to thermoplastic.

The City regularly sends maintenance workers to clean up homeless encampments wherein they come into contact with drug paraphernalia, including needles. The Union contends employees should be compensated for the increased health and safety risks employees encounter when cleaning homeless encampments.

The City currently requires some employees to obtain an arborist license, yet does not provide differential pay for obtaining arborist licenses. The Union contends that any license the City requires an employee to obtain, including the arborist license, should be compensated with differential pay. The City currently provides differential pay for other licenses it requires, but does not provide differential pay for obtaining an arborist license.

The City's comparability data show that no comparator pays any of these three differentials. (CX 46)

Recommendation: No change.

23. Longevity Pay

Union Proposal:

Employees who complete 25 years of satisfactory service with the City of Hayward and who are 55 years old or older, shall receive a one-time 2.5% increase to base salary. The increase shall be effective the first pay period following the 25th employment anniversary for employees 55 years old or older, or on the first pay period following the 55th birthday for employees who have completed at least 25 years of satisfactory service to the District by that date.

City Proposal: No change.

The Union contends the City should adopt some mechanism to recognize long-term service within the City. According to the City's salary survey, only Berkeley and Fremont provide some sort of longevity pay for their employees.

Recommendation: No change.

24. Federal or State Health Plan

Each party asserted the other was proposing a change to this language, but neither advocated for a change.

Recommendation: No change.

25. Alternate Benefit

The City has proposed a comprehensive revision of the existing section in Article 7. The City claims it is not seeking to increase or reduce the alternative medical benefit. However, the City is seeking to prohibit employees from receiving an alternative benefit while the City is also contributing to the employee's medical premiums as a dependent of another City of Hayward employee.

The Union asserts the City's proposal eliminates current coverage for permanent, part-time employees. The language of the City's proposal does not mention part-time employees, unlike the existing contract language.

The comprehensive revision also eliminates language describing the alternatives to which the City contribution may be applied, such as deferred compensation. As the rewritten provision raises several issues not addressed by both parties, the Panel declines to recommend adoption of the City proposal.

Recommendation: No change.

26. Change in Pay Upon Reclassification

City Proposal:

When a position is reclassified to a classification with a higher pay range, and the incumbent employee retains the position, ~~the~~at employee shall ~~normally be placed at~~ receive the first step in the new salary range. However, if such step is equal to or less than their present salary, they may receive the next step in the salary range of the new position which is close to five percent (5%) above their present salary, but not less than four and a half percent (4.5%). ~~or be placed on a step that represents a salary increase of a minimum of five percent (5%) added to base salary whichever is greater. However in no case shall the increase be greater than the fifth step of the range of the new classification to which the employee is reclassified.~~ When recommended by the department head

Department Director or designee and approved by the City Manager or designee, additional advancement may be granted. If no change in salary is granted, the employee may be allowed to carry forward time-in-step accumulation.

In the event the City reclassifies a position from a lower level classification to a higher level classification, the City Manager may in ~~his/her~~ his or her sole discretion appoint the incumbent occupying such reclassified position without competitive examination providing said incumbent meets the minimum qualifications (employment standards) for the higher classification. The Union shall be notified of appointments made pursuant to this provision.

When a position is reallocated to a classification with a lower salary range, the incumbent employee shall not be reduced in pay while he or she continues to occupy the position. If the current rate is below the maximum step of the new range the employee shall continue at the present salary and carry forward time-in-step accumulation. If the current rate exceeds the maximum step of the new range, the salary shall be frozen at its current level. When the incumbent leaves the position, a replacement shall normally be hired at the beginning rate.

Union Proposal: No Change.

The City wants to set the pay range for moving to a new classification between 4.5% and 5% of the prior salary. It cites situations where the most logical salary step is 4.8% or so above the person's prior wage; but because it is less than 5%, the person gets moved up to the next step and suddenly receives a nearly 10% raise. The City asserts this is excessive and therefore justifies the change.

The Union offered no argument in opposition to this change.

Recommendation: No change.

27. Working out of Class (C only)

Current Language:

Employees may be assigned to perform the duties of a higher paid classification when the incumbent is not available for the work shift. An Out of Class assignment shall only be made by the supervisor or department head or his/her designee at the beginning of the work shift.

An employee assigned Out of Class work shall receive 5% differential pay for all hours worked in the higher classification.

City Proposal:

The City's last, best, and final, offer eliminates this section.

Union Proposal: No change.

The City seeks to strike this provision from the Clerical unit MOU because it believes that clerical employees do not generally work in jobs that require hour-by-hour out-of-class functions. For example, a basic secretary might perform administrative secretarial duties for a few hours. The City regards this type of work as "other duties as assigned" and not such a burden on the employee that it justifies tracking and paying out-of-class compensation. Furthermore, the City asserts out-of-class work performed in this unit rarely requires special skills. In contrast, the Maintenance unit has employees who work in a higher level classification with meaningful differences in training, certification and/or skill which justifies this type of pay.

The Union asserts that during negotiations, the City did not propose the elimination of this section, and therefore, the City's last, best and final is a regression from its position at the table.

Recommendation: No change.

28. Retirement Program

City Proposal:

The City will continue to contract with the Public Employees' Retirement System (PERS) to provide a retirement program for employees.

Bargaining unit members deemed classic employees shall have the following retirement benefit package:

1. 2.5% at age 55 benefit formula
2. Fourth Level of 1959 Survivor's Benefits
3. Post-Retirement Survivor Allowance
4. One (1) Year Final Compensation,
5. Military Service Credit as Public Service
6. Continuation of Pre-Retirement Death Benefit after Remarriage of Survivor

These benefit plans require an employee contribution of eight percent (8%). Employees shall pay the full employee contribution of eight percent (8%), which shall be paid by the employee on a pre-tax basis in accordance with IRS Section 414(h)(2) method of reporting retirement payments.

New members as defined by the PEPPA pension reform statute shall have a retirement formula dictated by law and shall be required to pay at least 50% of the normal cost of their pension as identified, and periodically revised, by CalPERS or eight percent (8%) whichever is greater up to the lawful maximum.

~~Benefits shall include 2.5% @ 55 Full Retirement Formula, Fourth Level Survivor's Benefits Program, Repurchase of Military Service Credit, and Continuation of Death Benefit after Remarriage of Survivor.~~

~~In addition, the City will continue the IRS Section 414h2 method of reporting retirement payments wherein the amount of income reported to the IRS for the employee is reduced by the amount of the employee contribution to the retirement plan. The 414h2 option will apply only to the additional 1% employee PERS contribution.~~

~~The City will continue to pay the 7% employee PERS contribution, and continue to report such to PERS as "special compensation".~~

Union Proposal: No change.

The City's proposed language rearranges the text to make it more user friendly and increase reading comprehension. It also adds new language to comply with the California Public Employees' Pension Reform Act ("PEPPA") reflecting the requirement for "new" employees to public service after January 1, 2013 to pay 50% of the normal cost of their pensions.

The Union contends the provision the City proposed in its last, best, and final offer is a brand new provision unexamined through the negotiation process. This is not entirely true, however, as the Union agreed in April 2012 to sideletters in each MOU that made some of these changes. (CX 7, 8)

Recommendation: The MOUs should be amended to replace the language in Section 10.1 with the language in sideletters No. 7 to each MOU. In addition, the section should be amended with the following language: "New members as defined by the PEPPA pension reform statute shall have a retirement formula dictated by law."

29. Holidays Observed by the City, New Year's Eve

City Proposal: The City proposes importing existing language from Section 11.05 into Section 11.01 for ease of reference, as follows:

The following days shall be holidays for all full-time employees other than temporary and provisional employees.

| | |
|--------------------------------------|---|
| <u>New Year's Day</u> | <u>January 1</u> |
| <u>Martin Luther King Day</u> | <u>3rd Monday in January</u> |
| <u>Lincoln's Birthday</u> | <u>February 12</u> |
| <u>Presidents' Day</u> | <u>3rd Monday in February</u> |
| <u>Memorial Day</u> | <u>Last Monday in May</u> |
| <u>Independence Day</u> | <u>July 4</u> |
| <u>Labor Day</u> | <u>1st Monday in September</u> |
| <u>Admissions Day</u> | <u>September 9</u> |
| <u>Columbus Day</u> | <u>2nd Monday in October</u> |
| <u>Veterans Day</u> | <u>November 11</u> |
| <u>Thanksgiving Day</u> | <u>4th Thursday in November</u> |
| <u>Friday after Thanksgiving Day</u> | <u>Friday following 4th Thursday in November</u> |
| <u>Christmas Eve</u> | <u>December 24</u> |
| <u>Christmas Day</u> | <u>December 25</u> |

Employees shall be allowed the last half, up to four (4) hours, off on the work day immediately preceding the day on which New Year's Day is observed. An employee unable to be released for this time shall receive four (4) hours of compensatory time or vacation leave.

If any of the above said holidays fall on a Sunday, the following Monday shall be observed as a holiday provided, however However, ~~that~~ Christmas and New Year's Day shall be observed on the day the holiday actually falls for employees who work a 7-day operation. If Christmas Eve falls on a Sunday, the holiday shall be observed on the previous Friday.

If a holiday falls on a Saturday, the previous Friday shall be observed as a holiday. If a holiday falls on an employee's regular day off, or if an employee is scheduled or assigned to work on a holiday, an employee shall be entitled to credited with equivalent time off at a later date, and such time shall be credited to the employee's either compensatory time or vacation leave bank at straight time rate. Scheduling or assignment of holiday work must be approved in advance by the City Manager or designee.

Union Proposal: The Union proposed converting New Year's Eve from a half day to a full day off. Thus, New Year's Eve should also be included on the list of

holidays observed by the City.

The City surveyed comparable agencies and found that most do not provide a full day holiday on New Year's Eve. Seven cities offer no New Years' Eve or a choice between Christmas Eve and New Year's Eve. Furthermore, the City already provides 14.5 holidays, one full day of additional paid holiday over the average of the comparable agencies. Only Berkeley and Richmond offer more holidays. (CX 43, p. 12, CX 44, p. 3).

Recommendation: The Panel recommends consolidation of sections 11.01 and 11.05 as proposed by the City, except for the changes to the final paragraph. The Panel does not recommend increasing the New Year's Eve holiday.

30. Holidays for Part-Time Employees

The Union asserts that on December 6, 2013, the parties reached a tentative agreement on the City's proposed language for the Clerical unit, but did not have sufficient time to adequately discuss the language's application to the Maintenance unit. The City did not include this section in its brief on the issues. Therefore, the Panel makes no recommendation.

31. Qualifying for Holiday Pay

City Proposal:

All employees who qualify for pay on holidays observed by the City shall receive holiday pay provided that an employee who fails to report for a scheduled work shift on any of such holidays shall receive no pay; and provided also that in order to qualify for such paid holidays the employee must report for work on both his~~/~~ or her last regular work day immediately preceding the holiday and on his~~/~~ or her first regular work day following a holiday, and unless the employee so reports he~~/~~ or she shall receive no pay for such holiday. As an exception to the foregoing an employee who does not report for work as herein provided shall receive holiday pay if the reason for such absence is a bona fide illness supported by a statement from the attending physician or for another legitimate reason. Department Head Directors or their designated representatives may waive the requirement for a physician's statement in support of an absence because of illness. ~~Employees otherwise entitled to holiday pay but who are absent due to lay-off for a period not to exceed fifteen (15) days immediately preceding the holiday shall nevertheless receive holiday pay.~~

Union Proposal: No change.

The City's proposes deleting language providing holiday pay during a period of layoff. Since the goal of layoff is to save money, the City asserts it makes no sense to pay holiday pay to a laid-off employee.

The Union seeks to protect employees in a situation where there is a temporary layoff (a.k.a. shut downs) over the holidays as a cost saving measure.

Recommendation: No change.

32. Compensation for Holidays Worked

City Proposal:

Prior approval for holiday work must be secured from the City Manager or designee except in emergency situations where said approval cannot be obtained beforehand.

An employee who is required to work on a holiday shall receive, in addition to pay for the holiday, pay at the employee's regular hourly rate for all such hours worked.

~~Any work performed on the above holidays shall be paid for at the rate of time and one half the straight time rate or time off with pay at time and one half (1.5) the straight time rate; provided that employees who are entitled to pay or an equivalent credit to vacation leave as provided in Section 11.01 above for any such holidays if not worked shall receive such holiday pay or equivalent time off in addition to the time and one half (1.5) they are paid for working. There shall be no pyramiding of overtime.~~

Union Proposal: No change.

The City explains that the bottom-line effect of the proposed revision is to pay employees at the rate of double their base wage rate if employees work on holidays instead of paying double time plus one-half. The City believes that double time is sufficient compensation for work on these days. The City offered no comparability evidence to support its proposal.

Recommendation: No change.

33. Holiday Pay for 24-Hour Employees

Union Proposal:

When holidays fall on Saturday or Sunday, seven day, twenty-four hour employees who work on the actual holiday shall be paid compensatory time or

~~overtime for all hours worked~~ for the day worked NOT the day observed by the City.

City Proposal: No change.

The Union seeks to ensure that employees are paid for each hour worked on a holiday rather than capping the holiday at an eight hour day. The City contends the proposed language would be confusing. There is no evidence that the current language has caused any confusion.

Recommendation: No change.

34. Vacation Leave Policy

City Proposal:

Vacation leave is a benefit and right; ~~however,~~ the use of same shall be approved by the ~~department head~~ Department Director or ~~his/her~~ designee, taking into account the desires and seniority of employees and, more particularly, the workload requirements of the department. Employees shall take vacation leave regularly each year and shall be encouraged to take vacation at least a full week at a time. In order to give effect to this policy and to realize the greatest benefit from vacation leave for both employees and the City, limitations shall be placed upon the amount of unused vacation leave an employee is allowed to accumulate.

If an employee exhausts his ~~or~~ her vacation leave, the employee may apply for another eligible paid or unpaid leave (excluding sick leave) as provided for in this Memorandum of Understanding. If vacation ~~no other~~ leave is approved, and then it is determined that the employee does not have enough vacation leave available to cover the request and no other leave is requested, payroll will deduct the excess time from another eligible paid leave balance. the leave will be documented as ~~Unauthorized Leave Without Pay.~~ No vacation leave accruals will be credited in advance. No vacation leave will be earned while on an unpaid leave.

If vacation leave is used to remain in a paid status while on approved leave under the for purposes that qualify under a state or federal leave law, such as Family Medical Leave Act/California Family Rights or Pregnancy Disability Leave, the vacation hours will run concurrently with leave taken will count toward the state and/or federal leave entitlement.

Union Proposal: No change.

The City's asserts its changes to the first paragraph reflect that vacation is a negotiated benefit, not a legal right. In the second paragraph the City seeks to ensure that if an employee needs to use vacation leave, but does not have enough accrual, the City will debit other accrued paid leave of the employees. The City wants to keep employees

in paid status and be able to reduce their accruals (and the unfunded liability to pay off the leave later) by preventing employees from going on unpaid leave.

The City's explains its changes to the last paragraph are clean-up edits designed to better explain that vacation runs concurrently with FMLA/CFRA for a qualifying event.

The City asserts the Union has indicated that it does not agree with these changes because they might restrict an employee from going into a voluntary unpaid status. The City contends it has a compelling interest to prevent that from occurring.

The Union states the provision the City proposed in its last, best, and final offer is a brand new provision unexamined through the negotiation process.

Recommendation: No change.

35. Vacation Accrual for Full-Time Employees

City Proposal:

All full-time employees other than temporary and provisional shall accrue vacation leave benefits each payroll period based upon the number of regularly scheduled hours ~~the employee is entitled.~~

Vacation accrual schedule for employees who are budgeted and work full time are as follows:

| | Per 80 Hr. | Hourly | |
|----------------------|------------|------------|----------|
| Years of Service | Period | Equivalent | Annual |
| 0 to end of 4 yrs. | 3.08 hrs. | .0385 hrs. | 80 hrs. |
| 5 to end of 9 yrs. | 4.62 hrs. | .0578 hrs. | 120 hrs. |
| 10 to end of 19 yrs. | 6.16 hrs. | .077 hrs. | 160 hrs. |
| 20 yrs. & more | 7.70 hrs. | .0963 hrs. | 200 hrs. |

An employee will accrue at the next highest benefit level on his or her corresponding anniversary date. For purposes of crediting service time for vacation accruals, a former employee who is reinstated within ~~after an absence of more than one (1) year from the date of his or her separation shall not in a probationary and regular appointment. No receive credit for his/her prior service time in a nor will an employee who was serving in a temporary, provisional or~~

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contracted appointment shall be credited. ~~and appointed to a regular appointment be credited with his/her temporary, provisional or contract service time.~~

Vacation leave can be accrued but shall not be granted during the first six (6) months of service. The increases in vacation leave allowance shall be granted on the basis of full time, continuous service. An approved leave of absence shall not constitute a break in service for the purpose of this section, but vacation leave shall not be earned during any period of unpaid absence.

Vacation is accrued for all regular hours worked and shall continue to be earned during other authorized leaves with pay. When a holiday falls during an employee's absence on vacation leave, it shall not be deducted from employee's accrued leave.

The maximum vacation accrual cap shall be twice the employee's annual rate. The vacation accrual cap shall be maintained on a per pay period basis. ~~Employees shall be permitted to accrue above the cap during the year but must be at or below the cap by the pay period which includes December 31st each calendar year.~~ Exceptions may be permitted on approval of the ~~Department Head~~ Department Director and the City Manager. In granting such exceptions the City Manager may specify a time within which such excess vacation leave must be used. Failure to use such excess vacation leave within the time specified by the City Manager shall cause no additional vacation leave to accrue. It shall be the responsibility of each employee to insure the full use of vacation leave credits received by scheduling the necessary time off each year.

Union Proposal: No change.

The City seeks to remove reference to the word "entitled" in the first paragraph because employees are not entitled to work and then accrue vacation. Work is for the taxpayers' benefit, not the employee's benefit. The City's changes to the second paragraph are clean-up edits to remove the passive voice and double negatives.

Edits to paragraph three are designed to memorialize employee accrual protection in the event of an absence.

The City's changes to the fourth and final paragraph would end the practice of allowing employees to accrue more vacation than the accrual cap, so long as they are at or below the cap by the end of the year. The City explains that tracking the leave balance caps in this manner is a manual process. The payroll system is unable to automate the capping of accrual other than doing so each pay period a full payroll transaction is

processed. To track manually creates an administrative burden. The City feels the current accrual provision is not an efficient use of the already scarce staffing resources.

The Union asserts the provision the City proposed in its last, best, and final offer is a brand new provision unexamined through the negotiation process. Additionally, it points out that the phrase, “For purposes of crediting service time for vacation accruals, a former employee who is reinstated within one year from the date of his or her separation in a probationary and regular appointment” is an incomplete sentence. Under the current language, employees can keep all vacation days accrued throughout the year, until December 31. The existing language permits employees who take vacations near the end of the year to maintain accrued vacation days. Under the proposed language, the City wants to cap the amount of accrued vacation to twice the available vacation throughout the year, which punishes employees who take vacations late in the year. For example, under the current language, an employee who is eligible for two weeks of vacation can accumulate limitless amounts of vacation until December 31, at which point only four weeks is permitted to carry over into the new year. So, beginning on January 1, the employee with four weeks cannot accrue any further vacation. Under the proposed language, that same employee would simply stop accruing any vacation time after four weeks at any point throughout the year. The Union asserts the City currently cashes out excess vacation accrual, but is proposing to end pay outs for excess vacation accrual.

Recommendation: No change.

36. Vacation Accruals for Permanent Part-Time Employees

City Proposal: The City proposes to delete a portion of the fourth paragraph as follows:

~~The use of vacation shall be subject to the provisions of Section 12.01, 12.03, 12.04 and 12.05 of this Memorandum of Understanding. As of the end of the pay period which includes December 31 of each calendar year, no employee shall be allowed to maintain a balance of unused vacation leave in excess of twice the allowance earned by the employee in the preceding twelve (12) month period. Exceptions to the foregoing may be permitted pursuant to the provisions of Section 12.02 of this Memorandum of Understanding. The maximum vacation accrual cap shall be twice the employee's annual rate.~~

~~Employees shall be permitted to accrue above the cap during the year but must be at or below the cap by the pay period which includes December 31st.~~

Union Proposal: No change.

The City seeks to delete the language for the same administrative reason as discussed above in the section relating to full-time employees.

Recommendation: No change.

37. Sick Leave Policy

City Proposal:

Sick leave is a paid leave. Sick leave shall be allowed in case of an employee's bona fide illness or injury, or for an employee's doctor/health appointments. Use of sick leave shall be approved by the employee's supervisor. ~~Department Head Department Director or a designated representative.~~

Employees shall whenever possible make appointments for medical, dental, and other health and wellness similar purposes on Saturdays or other non-work time. ~~If this is not possible, sick leave may be used for these purposes and should not exceed four hours except in unusual circumstances.~~

In addition to the foregoing, sick leave may be used as family sick leave to care for an ill or injured family member or to take a family member to a doctor appointment. A family member is defined as a child, parent, spouse, registered domestic partner, or the child of a registered domestic partner in accordance with as defined by California Labor Code 233. Up to half (1/2) of an employee's annual sick leave accruals per calendar year may be used as family sick leave. A certificate from an attending physician stating the expected duration nature and extent of the family member's illness may be required. Authorization to use additional sick leave for family illness beyond the maximums identified above may be granted by the City Manager or designee when in his or her judgment circumstances warrant the same. Employees may use not more than four (4) hours of sick leave for the purpose of consulting with a physician concerning a serious illness or injury of a member of the employee's immediate family.

~~For family members who reside in the employee's home, there is no limit on the amount of sick leave that can be used as family sick leave by full time or part time employees. For family members who reside outside of the employee's home, up to half of his/her annual sick leave accruals per calendar year may be used as family sick leave by full-time employees. Part-time employees are allowed to use up to half of his/her annual sick leave accruals (based on his/her budgeted work schedule) per calendar~~

~~year as family sick for family members who reside outside of the employee's residence.~~

~~If an employee exhausts his/her sick leave, the employee may apply for another eligible paid or unpaid leave as provided for in this Memorandum of Understanding. If no other leave is approved, the leave will be documented as Unauthorized Leave Without Pay. No sick leave accruals will be credited in advance. Sick leave will not be earned while on an unpaid leave.~~

If sick leave is used for purposes that qualify under a state or federal leave law, such as Family Medical Leave Act/California Family Rights Act or Pregnancy Disability Leave, then any leave taken will count toward the state or federal leave entitlement. If an employee is unable to return to work and has exhausted all of ~~his/her~~ his or her leave entitlements, the employee may be retired for disability or separated.

Union Proposal: No change.

The City explains that edits to the first paragraph change the person approving the use of sick leave from the Department Head to the supervisor. The City believes this change will ease the workload for Department Heads and make for a quicker approval process. The Panel agrees with this proposal.

The City asserts its changes to the second paragraph remove a restriction for use of sick leave for medical appointments during the workweek. The Union asserts that elimination of language that states employees can use sick leave for purposes of medical, dental and other health and wellness purposes up to four hours implies employees can no longer use sick leave for this purpose. The Panel finds that addition of the language, “medical, dental, and other health and wellness” before the word “appointments” in the first paragraph should allay the Union’s concerns.

The City asserts the additions to the third paragraph memorialize Labor Code section 233 in plain English so that employees may better understand the benefit. Labor Code section 233 allows employees to use up to half of their annual sick leave accrual to be absent from work due to a family member’s illness. Although the intent of the revision is just to explain what the existing Labor Code benefit means, the Union appears to want to expand the language to allow employees to use all sick leave for family member illnesses. The City asserts it is neither the law nor the Parties’ current practice and therefore believes that its change is appropriate.

The Panel finds, however, that the language, “For family members who reside in the employee's home, there is no limit on the amount of sick leave that can be used as family sick leave by full time or part-time employees” undermines the City’s position that there is no practice of allowing more than half an employee’s leave to be used for family members who live with an employee.

The City asserts that the remaining changes propose to delete language that restricts leave use that could be inconsistent with FMLA/CFRA and/or Labor Code section 233. The Panel recommends the Parties agree to this amendment in the final paragraph.

Recommendation: The Panel recommends the changes in the first and final paragraphs of the City’s proposal.

38. Sick Leave Accruals for Part-Time Employees

City Proposal:

~~Only those P~~part-time employees who are regularly scheduled to work ~~employed in positions budgeted for~~ twenty (20) or more hours per week ~~and who consistently work twenty (20) or more hours per week~~ shall be entitled to accrue eligible for sick leave benefits each payroll period based upon the total number of hours for which the employee was compensated in the payroll period. The amount of sick leave ~~so~~ accrued ~~by part-time employees~~ shall be proportionate to that earned by full-time employees based on the number of hours worked by the part-time employee. The full time sick leave accrual rate is 3.7 hours per payroll period.

The use of sick leave so earned by part-time employees shall be subject to the provisions of ~~Sections 13.01, 13.03, 13.04, 13.05 and 13.06~~ of this Memorandum of Understanding. Eligible part-time employees who are scheduled to work, but who are unable to do so because of illness, shall be charged sick leave in an amount equal to the number of hours of work for which they were scheduled on the day(s) they were unable to work due to illness.

~~The use of sick leave shall not be permitted for part-time employees during the first three (3) months of service.~~ Sick leave can be accrued but shall not be granted during the first three (3) months of service. Sick leave is accrued for all regular hours worked and shall continue to be earned during other authorized leaves with pay.

There shall be no limit upon the number of hours of unused sick leave that may be accumulated by an employee. Upon separation of employees, sick

leave balance for which payment has not been made shall be canceled, and shall not be restored if a former employee is reinstated.

Union Proposal: No change.

The City's goal is to explain the proportionate accruals earned and to qualify employees to use sick leave if their positions are at least budgeted at 20 or more hours per week irrespective of how many hours they actually worked in the most recent pay period. The City's proposed changes also eliminate redundancy in the part-time employee provision.

The City states it added language at the end of the provision to make clear that there is no accrual cap, and that part-time employees can cash out sick leave at the end of public service. The only concession is that employees who later return to the City cannot recapture sick leave that they did not cash out when they previously ended their City employment.

The Union's objection is that the language was not proposed until the LBFO and has not been subjected to the negotiations process.

Recommendation: No change.

39. Sick Leave Notice and Certification

City Proposal: The City proposes changes to the first two paragraphs of the MOUs for both units and addition of section B regarding concerted job actions to the Clerical MOU, as follows:

A. Procedure for Compensation

In order to receive compensation while absent on sick leave, the following procedures shall apply:

1. Employees assigned to continuous shifts in the Wastewater Treatment Plant, or someone on their behalf, shall notify their supervisor at least two (2) hours prior to the commencement of their scheduled shift whenever they will be unable to report for said shift due to illness, injury or unforeseen emergency.
2. All other employees shall notify their supervisor or designated representative prior to the commencement of their scheduled shift whenever they will be unable to report for work due to illness, injury or unforeseen emergency.

~~Department head~~ Department Directors may waive these requirements upon presentation of a reasonable excuse by the employee.

Employees shall file a ~~personal affidavit or~~ physician's certificate with their supervisor if required by their ~~Department Head~~ Department Director or ~~his/her~~ his or her designee, ~~stating cause of absence for any use of sick leave~~. After ~~three (3)~~ five (5) working days' absence, the employee's supervisor ~~shall~~ may require a physician's certificate ~~at this point a personal affidavit will not be acceptable~~. If employees become ill while on vacation, periods of illness may be charged to sick leave upon presentation of a physician's certificate. In case of frequent use of sick leave employees may be requested to file physician's certificates for each illness, regardless of duration, after having been counseled about their use of sick leave. A physician's certificate needs to include the name and signature of the attending physician, the date and time the employee was seen by the physician. Employees may also be required to take an examination by a physician designated by the City and to authorize consultation with their own physician concerning their illness. Sick leave shall not be granted for absences caused by substance abuse or excessive use of alcoholic beverages. As an exception to the foregoing, sick leave may be authorized for the treatment of alcoholism or substance addiction when such condition has been diagnosed by competent medical authority.

These same requirements may also be applied for family sick leave requests.

B. Certification as a Result of Concerted Job Action

1. In the event the City Manager finds that employee absences from duty are the result of a concerted job action, any employee claiming sick leave with pay shall be required to provide certification on a form prescribed by the City. Such form shall include but not be limited to the name and signature of the attending physician, the date and time the employee was seen by the physician, and the physician's certification that the illness or injury was of such nature as to prevent the employee from performing ~~his/her~~ his or her job, but disclosure of a specific medical diagnosis shall not be required. A determination by the City Manager that a job action exists, necessitating the sick leave certification procedures required herein, shall be final and not subject to any grievance procedure in effect between the Union and the City. Nothing herein shall prevent a ~~department head~~ Department Director from approving the payment of sick leave in situations where the employee submits alternative proof of disability satisfactory to the ~~department head~~ Department Director showing that the employee was unable to work on the date(s) for which sick leave is requested.

Union Proposal: No change.

The City's changes reduce the length of sick leave that triggers the requirement for a confirming note from five days to three days. The employees complain about co-payments required to obtain a doctor's note. The City believes, however, three days is a reasonable amount of time off to require a note, particularly for employees with low sick leave balances.

The Union contends it makes no sense to make a physician's certificate a requirement, rather than making discretionary. Management already has the option to insist on a medical note.

Recommendation: No change.

40. Payment for Unused Sick Leave

City Proposal:

Any ~~full-time~~ employee leaving the employment of the City in good standing after having completed twenty (20) years of continuous service, or upon retirement from the City for service or disability, with at least ten (10) years of service, or upon termination of employment by reason of death shall receive payment for a portion of that sick leave earned but unused at the time of separation. The amount of this payment shall be equivalent to one percent (1%) of sick leave earned but unused at the time of separation times the number of whole years of continuous employment times an employee's hourly rate of pay at the time of separation.

~~For the purpose of this computation, the hourly rate of pay for an employee who works a 40 hour week shall be his or her annual salary including any City paid employee PERS contribution divided by 2080 hours. Payment of unused sick leave for part-time employees shall be based upon the hourly rate of pay in effect at the time of separation including any City paid employee PERS contribution.~~

That portion of an employee's sick leave balance for which payment is not provided shall be canceled, and shall not be restored if said employee is reinstated.

Union Proposal: No change.

The City states its changes to the first paragraph ensure no cash-out for sick leave unless the employee has worked for the City for at least 10 years at the point of retirement. This proposal limits the City's liability for cash-out payments, while rewarding longevity.

The City wishes to delete the computation language in the second paragraph because it may not always be accurate in the future. It asserts that because the City strikes the reference in the first paragraph limiting cash-out to full time employees, there would be an issue of interpretation for part-time employees. If accepted, part-time employees (who do not work 2080 hours per year) would be able to cash out sick leave.

In addition to its assertion that the proposal appeared for the first time in the LBFO, the Union is concerned that the City's proposal fails to include language stating how the payment will be computed and thus proposes that current contract language be rolled over. The Panel shares the Union's concern.

The City's survey of comparators shows that payment for unused sick leave varies. Eight cities cash out leave for employees with fewer than 20 years of service. Three do not require a minimum service amount, and one requires only 2 years of service. Four require at least 15 years of service. Alameda does not cash out sick leave for employees hired after 1978. (CX 43, p. 13)

The Panel finds that the current provision already rewards longevity by increasing the percentage payout with each year of service. In addition, while a new 10-year requirement would minimize liability to future employees, there could be a concern about impairment of vested rights of existing employees.

Recommendation: The Panel recommends the parties agree to delete the word "full-time" in the first paragraph, but does not recommend other proposed changes.

41. Leaves of Absence

City Proposal:

The City Manager, upon written request of a full time employee other than temporary and provisional employees, may grant for the good of the service a leave of absence without pay for a maximum period of one (1) year. ~~The City Manager may grant an extension of an approved leave of absence without pay for an additional period, said extension not to exceed one (1) year.~~ Consideration for granting leave will take into account the employee's previous time off, reason for request, business needs, etc. Leaves hereby authorized shall include medical leaves, educational leaves, parental leaves, and leave for any other purpose promoting the good of the service. Part-time employees are eligible for leaves of absence on a pro-

rata basis (e. g. half-time employees are eligible for one-half the leave of absence duration of a full-time employee).

~~Requests for parental leave of six (6) months or less shall be approved unless the granting of such leave is deemed to work hardship upon the City. Upon request of the employee and approval of the City Manager, up to six (6) additional months of unpaid parental leave of absence may be granted for a total not to exceed twelve (12) months.~~

Whenever granted, leaves of absence shall be in writing and signed by the City Manager. Upon expiration of such a leave, the employee shall be reinstated to the position held at the time leave was granted. Failure of the employee to report promptly at its expiration or within a reasonable time after notice to return to duty, shall terminate his or her right to be reinstated.

All eligible paid leaves must be ~~depleted~~ exhausted during any before this leave is taken granted under this provision. Should the employee exhaust their leave balances while on the leave, all remaining leave will be without pay. If Leave of Absence is used for purposes that qualify under a state or federal leave law, such as Family Medical Leave Act/California Family Rights or Pregnancy Disability Leave, the leave taken will count toward the state or federal leave entitlement. If an employee is unable to return to work and has exhausted all of ~~his/her~~ his or her leave entitlements, the employee may be retired for disability or separated.

No benefits will be provided during this period except in those instances when it is required by law. Health coverage may be continued, but at the employee's own cost. ~~as provided below. Health coverage may be continued but at the employee's own cost in concurrence with COBRA laws. Employees who are out on a bona fide work related injury or illness or who are waiting for a determination on his/herhis or her CalPERS disability retirement application, will be placed on a Leave of Absence. However, employees on workers' compensation or waiting for a CalPERS disability retirement determination will continue to receive health benefits but are still responsible for any out of pocket expenses.~~

~~Employees on SDI or Workers' Compensation should contact the Human Resources department to determine if a medical leave is necessary to insure their job rights."~~

Union Proposal: No change.

The City proposes in the first paragraph to limit leave without pay to one year. This limitation prevents employees from being out even longer, while remaining on the health plan. It argues that at some point, the City should be able to either get the employee back to work or find a permanent replacement.

The City's deletion of the 6-month default parental leave in paragraph 3 treats parental leaves the same as all other unpaid leaves. The City asserts this would prevent

any allegation that the City treats employees with the protected status of pregnancy related health conditions differently than other employees.

The City's edits to the fifth paragraph contemplate the approval of a leave that is part paid and part unpaid. The City asserts the provision clarifies that the employee exhaust paid leave first, but need not obtain a second approval to go on unpaid leave because the unpaid portion may be approved at the beginning of the paid leave.

Proposed changes to the final paragraph of the provision prevent employees from being out on unpaid leave while receiving City health insurance, unless required by law. The City argues it should not have to carry an employee on the books and pay their health benefits without the employee actually coming to work, unless there is a legal entitlement to such a situation.

The Union contends there are substantial changes in this proposal that were never discussed with the Union. As such, the union cannot fully evaluate the proposed changes and proposes current contract language be rolled over.

Recommendation: No change.

42. Parental Leave

Union Proposal:

Employees shall be granted ~~forty (40)~~ one hundred and twenty (120) hours leave with pay at their current straight time hourly rate upon the birth of a child, or when a child begins residence with an employee who has commenced adoption proceedings with full intent to adopt. Part-time employees hired into positions budgeted for twenty (20) or more hours per week and who consistently work twenty (20) or more hours per week shall be granted proportionate leave based upon their work schedules. Leave must be taken within one year from the date of birth or placement of the child.

City Proposal: No change.

Currently, employees are given only one week to bond with their child. The Union contends employees should be given at least three weeks.

The City believes that any enhancements to this benefit are not justified by the labor market. Hayward is the only comparable agency to offer a paid parental leave benefit. (CX 43, p. 14 and CX 44, p. 4)

Recommendation: No change.

43. Safety Shoes (M only)

Union Proposal:

Upon recommendation of the department head and approval of the City Manager or a designated representative, an employee other than a temporary or provisional employee, may be reimbursed for the purchase of safety shoes in an amount not to exceed ~~One Hundred Seventy Five Dollars (\$175.00) per year~~ Two Hundred Dollars (\$200.00) for 2013 and not to exceed Two Hundred Twenty Five Dollars (\$225.00) for 2014.

City Proposal: No change.

The Union contends the City should increase their contribution in line with the increased cost of safety shoes.

The City surveyed comparable agencies and asserts that it already pays the market average for this benefit and therefore does not believe that an increase is justified. (City Exhibit 43, p. 15) However, five pay more than the City. It is only the City of Vallejo's payment of \$100 that skews the average. No comparator pays more than \$225.

Recommendation: The Panel recommends that the safety shoe reimbursement be raised to \$200.00 effective July 1, 2014.

44. Participation in Promotional Exams (C only)

City Proposal:

~~Consistent with operating requirements, the City will attempt to schedule promotional examinations during the operating hours normally observed in City Center Offices.~~ Employees who participate in promotional examinations which are scheduled by the City during the employee's scheduled working hours shall do so without loss of compensation. Employees who participate in promotional examinations outside of their normal work schedule shall receive no compensation for such participation.

Union Proposal: No change.

The City seeks to delete the sentence concerning operating hours of City offices because there may be occasions when tests would be more convenient or appropriate for employees and managers alike that are not regular City office hours.

The Union contends the City is legally required to pay employees for all required examinations regardless of whether the exam is held during or outside of normal business hours. These examinations are part of working for the City. The Union contends that requiring work exams without pay is a violation of the FLSA and the California Labor Code, but cited no authority.

The Panel notes that a promotional examination generally is not required of any employee. There also has been no showing, however, that the language has posed a problem in any particular instance.

Recommendation: No change.

45. Introduction of New Equipment (C only)

City Proposal:

In the event of the introduction of new machinery or new processes the City will provide suitable training for those employees whose job assignments require operation or maintenance of the new machinery or processes.

~~The Union shall be given reasonable advance notice of the introduction of new equipment or new processes which may result in the layoff of employees in the bargaining unit. Thereafter, the City and the Union shall meet for the purpose of discussing possible means of mitigating the impact of the introduction of said equipment upon affected employees. The City shall provide counseling to any displaced employee and shall assist the employee in securing training opportunities which may qualify him or her to be employed in another position with the City. The City shall train employees required to operate such new equipment and shall also review the classifications of those employees so assigned."~~

Union Proposal: No change.

The City seeks to revise this section because the existing language is unnecessarily onerous. It asserts there may be occasions when the parties need to discuss new equipment and others where that is not necessary.

The Union objects to removal of the notice and meet and confer requirements and the employee counseling requirement.

Recommendation: No change.

46. Pre-Retirement Counseling (C only)

City Proposal:

The Human Resources Department will continue to make CalPERS brochures and forms, Great West distribution forms, and other information related to retirement options available to employees. Upon request staff will meet with employees to provide an explanation of City administered benefits.

Union Proposal: No response.

Recommendation: No change.

47. Restrictions on Outside Work

City Proposal:

Gainful employment outside of an employee's regular City position shall be subject to approval by the City Manager or the City Manager's designee. Approval of outside employment may be granted for a period up to one (1) year. The City may deny an employee's application for outside employment which is incompatible with the employee's City employment or which is of such a nature as to interfere with satisfactory discharge of his or her regular duties. The City may revoke an employee's approved right to engage in outside employment which proves to violate the conditions of this provision. Violation of this section shall be cause for disciplinary action."

Union Proposal: No change.

The City asserts that outside work restrictions are important to prevent conflicts of interest, negative associations with the City, and other employment endeavors contrary to the City's wellbeing. It contends the City's proposal identifies the broad categories recognized by California law for restricting employees' moonlighting without being so specific that unanticipated inappropriate outside employment cannot be banned.

The Union argues the City's proposed language significantly restricts an employee's ability to obtain outside work in violation of California law delineating when a public employer can restrict outside work.

Recommendation: The Panel recommends no change to Sec. 16.19 in the Maintenance contract. It recommends the Parties agree to add a similar provision in the Clerical MOU.

48. Temporary Positions / Employment Agencies

Union Proposal:

Temporary employment is employment in a position created for a special or temporary purpose for a period of not longer than six (6) months, or temporary employment in a regular existing position for a period not to exceed six (6) months. Such appointment may be made from appropriate eligible registers if available. Service in a temporary appointment may be recognized in determining whether an applicant meets minimum employment standards for a class. Temporary employees shall not receive vacation, holiday pay, sick leave, or other fringe benefits. [Only the Clerical contract contains this paragraph.]

Persons retained from employment agencies to fill vacant positions normally occupied by members of this bargaining unit will be subject to the same six (6) month limitation as temporary employees hired by the City to fill such positions. If the Union has reason to believe that the six (6) month limitation on temporary employment is not being observed, the City will furnish to the Union upon request a list of persons serving in temporary positions and the dates upon which they commenced employment.

No position can be filled for more than six months on a temporary basis through the life of the contract. In the event a position requires a temporary employee for over six months, the City will notify the union and engage in a good faith meet and confer process.

City Proposal: No change.

The Union states it seeks to limit the City's ability to fill positions more than six months on a temporary basis. This language would not seem necessary in the Clerical contract, particularly. The Union's proposal would also require the City to meet and confer if the City finds it will need to fill a position on a temporary basis for longer than six months.

The City did not explain its opposition.

Recommendation: The Panel recommends the parties agree to the Union's proposal.

49. No Strike

Currently, the Clerical unit's MOU contains a section which states the union will not engage in any strike, slowdown, stoppage of work, etc. during the term of the MOU. The Union is seeking to have this section removed.

The City is attempting to impose this provision on the Maintenance unit according to its last, best, and final offer.

The Union contends that its members should be able to engage in a strike in the event the City imposes its last, best, and final offer. As such, the Union proposes this language not be contained in any MOU.

The City believes that no-strike clauses are almost universal in MOUs. Its survey of comparators found that seven MOUs covering maintenance workers have no strike clauses. (CX 43, p.10) Six covering clerical workers have no-strike clauses. (CX 44, p. 8)

Recommendation: No change.

IV. SUMMARY OF RECOMMENDATIONS

The Panel recommends against the City's one-year proposals, which would impose a \$44 per pay period OPEB Contribution (CX 53), and have a \$197.47 per pay period impact on clerical employees; it would impose a \$33.50 per pay period OPEB contribution on maintenance employees (See CX 51) with a \$163.88 per pay period impact. Instead the Panel, or the Chair if no Panel member agrees, makes the following recommendations regarding compensation:

FY 2014: The Panel recommends a \$0% raise. The Chair recommends a \$750 payment on ratification, pro-rated for part-time employees, as a condition of the Panel's recommendation that Clerical unit employees shall begin making 20% contributions to dental insurance premiums and 50% contributions to vision premiums effective 1/1/2014.

FY 2015: The Panel recommends a 1% raise on July 1, 2014 and 1% raise on January 1, 2015. The Panel also recommends the City should reduce its maximum

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contribution to health insurance premiums to the family rate of the fourth-highest plan available through PERS, effective January 1, 2015.

FY 2016: The Panel recommends a 2% raise. In addition to a 2% increase, the Chair recommends that an amount that is sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26.

The Panel does not recommend that the Clerical and Maintenance units contribute to retiree health benefits.

The Panel recommends that the language in the current contract Section 14.04 Industrial Disability Leave, be amended as follows: “additional compensation equal to the difference between 80 percent of said employees’ regular pay and the disability compensation allowance shall be granted for up to one year during any three year period regardless of the number of injuries during that three year period.”

The Panel makes the following recommendations for changes to contract language:

Layoffs, Order of Layoffs

The Panel recommends that the following sentence be added to section A: “A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required.” All other language should remain unchanged.

Seniority

The Panel recommends the Parties agree to the proposed language.

Notice of Layoff

The Panel recommends the Parties agree to the proposed language on Notice of Layoff .

Employee Options

The Panel recommends the Parties agree to the City's proposed language regarding Employee Options.

Night Shift Differential (M only)

The Panel recommends the night shift differential for the evening shift be raised to \$1.30 for employees who work after 4:00 p.m. and the differential for the graveyard shift be increased to \$1.60 for those who work between 11 p.m. and 7 a.m.

Standby Provisions (M only)

The Panel recommends updating the MOU's reference to communication devices.

Distribution Certification Differential (M only)

If it is true that the D-4 level certification is needed for work performed by the City, the language should be changed to reflect the change in the law. The Panel does not recommend a change rolling the differential into base pay.

Bilingual Pay

The Panel recommends that the Parties agree that the language in the second paragraph of the City's proposal should be added to this section together with language that permits the City to test when there is a documented reason to question competency.

Retirement Program

The MOUs should be amended to replace the language in Section 10.1 with the language in side letter No. 7 to each MOU. In addition, the section should be amended with the following language: "New members as defined by the PEPRA pension reform statute shall have a retirement formula dictated by law."

Holidays Observed by the City, New Year's Eve

The Panel recommends consolidation of sections 11.01 and 11.05 as proposed by the City, except for the changes to the final paragraph. The Panel does not recommend increasing the New Year's Eve holiday.

Sick Leave Policy

The Panel recommends the changes in the first and final paragraphs of the City's proposal.

Payment for Unused Sick Leave

The Panel recommends the parties agree to delete the word "full-time" in the first paragraph, but does not recommend other proposed changes.

Safety Shoes (M only)

The Panel recommends that the safety shoe reimbursement be raised to \$200.00 effective July 1, 2014.

Restrictions on Outside Work

The Panel recommends no change to Sec. 16.19 in the Maintenance contract. It recommends the Parties agree to add a similar provision in the Clerical MOU.

Temporary Positions / Employment Agencies

The Panel recommends the parties agree to the Union's proposal.

Dissenting opinions of the Panel members are attached.

DATED: February 3, 2014.

Katherine J. Thomson
Panel Chair

Kelly McAdoo
City of Hayward
Dissenting and Concurring

John Stead-Mendez
SEIU Local 1021
Dissenting and Concurring